

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

Defendants.

18-CV-2921 (JMF)

**NOTICE OF FILING OF DEPOSITION DESIGNATIONS FOR KAREN DUNN
KELLEY**

Plaintiffs hereby file with the Court the synopsis of deposition excerpts for Karen Dunn Kelley (Exhibit 1), and the deposition excerpts for Karen Dunn Kelley that will be offered as substantive evidence (Exhibit 2) (Plaintiffs' designations are indicated in yellow, and Defendants' counter-designations are indicated in blue).

Respectfully submitted,

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Exhibit 1

Summary: Karen Dunn Kelley (August 28, 2018)

Karen Dunn Kelley testified regarding her background and history working with Secretary Ross. Tr. 13-14, 16-17. In her role at the Commerce Department she supervises the Census Bureau. Tr. 25-26. In spring or summer 2017, she learned that one of the Secretary's priorities was adding the citizenship question to the 2020 Census. Tr. 38-42. As of late July 2017, she had a specific interest in how a question would be added to the census. Tr. 29. Ms. Dunn Kelley was aware that Commerce and DOJ were having discussions about the citizenship question, but that she was not involved. Tr. 126-127.

After receiving DOJ's request, she made a plan for how the Census Bureau would review it. Tr. 99-101, 103. She understood that when a new question was being considered, there was a need to determine if the question was statutorily mandated or appropriate. She testified that a technical review by the Census Bureau was being conducted. Tr. 136, 138, 140, 144-145. This review normally included a meeting with DOJ to discuss the requested information. Tr. 187. In this case, the Bureau identified an alternative way of satisfying DOJ's request, but DOJ refused to meet regarding the citizenship question. Tr. 187, 189-193.

Ms. Dunn Kelley is not aware of anything that Commerce or Census did to validate the DOJ's stated rationale, that the current data collected under the ACS are insufficient to meet its purpose under the VRA. Tr. 285. To her knowledge, DOJ never identified any number of cases that they would have litigated, but for the absence of block-level citizenship data. Tr. 287. Ms. Dunn Kelley is unaware of any research about how the citizenship question will perform in the decennial census environment. Tr. 283. To her knowledge, no one at Commerce saw the results of the testing that had been performed on the citizenship question in the context of the ACS. Tr. 284.

Ms. Dunn Kelley confirmed that the Census Bureau experts never changed their views that adding the citizenship question would involve additional cost. Tr. 167-168. The Bureau concluded that Alternative B (the citizenship question) would result in lower quality enumeration data and fewer correct enumerations. To her knowledge, Census Bureau has not changed their assessment of Alternatives A, B, and C. Tr. 172-179. The Census Bureau has not changed its view as to the downsides of asking the citizenship question or their recommendation as to how to respond to the DOJ request. Tr. 203-204, 206-213. Ms. Dunn Kelley testified about the process of analyzing Alternative D and acknowledged it was not preferable to C and had all of the problems of B as set forth in the Abowd memo. Tr. 251-258.

Many stakeholders were opposed to adding the question, so Acting Director Ron Jarmin sought to find someone to speak in favor of the citizenship question. Tr. 233-246.

Ms. Dunn Kelley acknowledged that testing the citizenship question could determine whether response rates would decline materially; an end-to-end test could show how effective non-response follow up (NRFU) is in the context of the citizenship question. Tr. 293. She has not seen any data contradicting the Census Bureau's analysis regarding the decline in self-response rates or any scientific studies or data contradicting the Abowd memo. Tr. 300-303. Commerce did not ask the Census Bureau to test the citizenship question or study how it might perform in the current political climate. Tr. 313-317.

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YORK IMMIGRATION COALITION, ET AL.,

Plaintiffs,

vs. Case No. 1:18-CF-05025-JMF

UNITED STATES DEPARTMENT OF COMMERCE, ET AL.,
Defendants.

Washington, D.C.

Tuesday, August 28, 2018

Deposition of:

KAREN DUNN KELLEY

called for oral examination by counsel for
Plaintiffs, pursuant to notice, at the office of
Arnold & Porter, 601 Massachusetts Avenue NW,
Washington, D.C., before KAREN LYNN JORGENSEN,
RPR, CSR, CCR of Capital Reporting Company,
beginning at 9:04 a.m., when were present on
behalf of the respective parties:

Veritext Legal Solutions

Mid-Atlantic Region

1250 Eye Street NW - Suite 350

Washington, D.C. 20005

1	CONTENT				PAGE
2					
3	KAREN DUNN KELLEY				9
4	Examination by Mr. Grossi				9
5	Examination by Ms. Goldstein				269
6	Examination by Ms. Boutin				323
7	Examination by Ms. Shah				339
8	Examination by Mr. Adams				349
9	KAREN DUNN KELLEY DEPOSITION EXHIBITS				
10	EXHIBIT				PAGE
11	NUMBER				
12	Plaintiffs' Exhibit 1	Statement			33
13	Plaintiffs' Exhibit 2	Email chain			47
14	Plaintiffs' Exhibit 3	Email chain			52
15	Plaintiffs' Exhibit 4	Supplemental memorandum			65
16	Plaintiffs' Exhibit 5	Defendants' objections			65
17	Plaintiffs' Exhibit 6	Email train			78
18	Plaintiffs' Exhibit 7	Emails			84
19	Plaintiffs' Exhibit 8	Email			90
20	Plaintiffs' Exhibit 9	Email			105
21	Plaintiffs' Exhibit 10	Email			107
22	Plaintiffs' Exhibit 11	Email			119
23	Plaintiffs' Exhibit 12	Declaration			119
24	Plaintiffs' Exhibit 13	Email			135
25	Plaintiffs' Exhibit 14	Email			145
26	Plaintiffs' Exhibit 15	Email			156
27	Plaintiffs' Exhibit 16	January 3, 2018 memorandum			159
28	Plaintiffs' Exhibit 17	Email			183
29	Plaintiffs' Exhibit 18	Email			186
30	Plaintiffs' Exhibit 19	Email			194
31	Plaintiffs' Exhibit 20	Email			195
32	Plaintiffs' Exhibit 21	January 9, 2018 memorandum			203
33	Plaintiffs' Exhibit 22	Email			219
34	Plaintiffs' Exhibit 23	Email			235
35	Plaintiffs' Exhibit 24	Email			242

1	Plaintiffs' Exhibit 25	Email	243
	Plaintiffs' Exhibit 26	Questions	249
2	Plaintiffs' Exhibit 27	March 1, 2018	252
		memorandum	
3	Plaintiffs' Exhibit 28	Final decision	258
	Plaintiffs' Exhibit 29	September 20,	355
4		2017 memorandum	

(Exhibits attached to transcript.)

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P R O C E E D I N G S

WHEREUPON,

VIDEOGRAPHER: Good morning. We are going on the record at 9:04 a.m. on Tuesday, August 28, 2018. Please note that the microphones are sensitive and may pick up whispering, private conversations and cellular interference. Please turn off all cell phones and place them away from the microphones, as they can interfere with the deposition audio. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the deposition of Karen Dunn Kelley taken by counsel for the plaintiff in the matter of New York Immigration Coalition, et al., versus U.S. Department of Commerce, et al. This case is filed in the U.S. District Court for Southern District of New York. This deposition is held at the law offices of Arnold & Porter located at 601 Massachusetts Avenue Northwest, Washington, D.C. 20001.

My name is Dan Reidy from the firm

1 Veritext Legal Solutions, and I'm the
2 videographer. The court reporter is
3 Karen Jorgenson from the firm Veritext Legal
4 Solutions.

5 I am not authorized to administer an
6 oath. I am not related to any party in this
7 action, nor am I financially interested in the
8 outcome. Also, counsels' appearances will be
9 noted on the stenographic record rather than
10 orally at this time.

11 Will the court reporter please swear in
12 the witness?

Global
Objection
402/403

13 KAREN DUNN KELLEY,
14 called as a witness, and having been first duly
15 sworn, was examined and testified as follows:

16 THE WITNESS: Yes, I do.

17 EXAMINATION BY MR. GROSSI:

18 Q Good morning, Secretary Kelley. We met
19 briefly in the hall. But for the record, my name
20 is Peter Grossi, and I'm an attorney here with
21 Arnold & Porter. And I'm going to be leading off
22 this morning. We represent the plaintiffs, the

1 just said?

2 You're good. And I just would like to
3 say good morning. I think I said good morning to
4 each of you, but I did miss one or two as I
5 came -- as you came in. So if I missed you, I
6 apologize and good morning.

7 BY MR. GROSSI:

8 Q That's okay. Lots a people.

9 A Yes. A lot of people.

10 Q So let's begin a little bit with your
11 background, for the record.

12 A Yes.

13 Q So I understand you graduated with a BS
14 degree from the College of Commerce and Finance at
15 Villanova University?

16 A Yes, I did.

17 Q And you then pretty much started in the
18 investment business in 1982 with Drexel Burnham?

19 A Yes, sir.

20 Q And then you joined a different firm,
21 Federated Investors in 1986; is that right?

22 A Yes.

1 Q Then in 1989, you joined a firm known as
2 Invesco, correct?

3 A Not -- no.

4 Q Okay. Clarify, please.

5 A I joined a legacy firm called
6 AIM Management, which, through a series of mergers
7 and acquisitions became Invesco when I left. But
8 when I started in 1986, it was AIM Management.

9 Q Okay. Thank you for the clarification.
10 You then worked at either AIM or Invesco
11 itself until fairly recently, 2017?

12 A Yes. I -- from the time I started AIM
13 through its legacy companies until I left last
14 summer.

15 Q Okay. You initially started as a money
16 market portfolio manager?

17 A Yes. Money market and government
18 portfolio.

19 Q But by the end, you hold -- held various
20 positions and, ultimately, were in senior
21 management of Invesco; is that correct?

22 A That is correct.

1 have you ever had training and experience in
2 conducting surveys --

3 A No.

4 Q -- of the public?

5 Let me finish.

6 Okay. Let me ask now a little bit about
7 your early --

8 A So excuse me. Could you please then
9 repeat that whole question so I --

10 Q Sure.

11 A -- I did not interrupt you. That was
12 rude. I apologize.

13 Q No. Not at all.

14 Did you ever have any training or
15 experience in conducting surveys of the public?

16 A No.

17 Q Okay. Now, let me ask about your
18 relationship with now Secretary Ross. Originally,
19 it was Mr. Ross when you met him, right?

20 A Yes.

21 Q Okay. And did you first meet him in
22 about 2006 when his company was folded in or

1 became part of Invesco?

2 A Yes.

3 Q You didn't know him before then?

4 A I might have met him or been at a panel
5 with him or an event with him, but I did not know
6 him.

7 Q Okay. And his company was an investment
8 company that became part of Invesco?

9 A Yes.

10 Q And you worked with him while you were at
11 Invesco, correct?

12 A Yes. I would -- I would like you to
13 clarify the word "with."

14 Q Okay. Specifically around 2008, 2009 in
15 the financial crisis, did you do a great deal of
16 work with him in various deals?

17 A Yes. I did not work within his silo or
18 his company, but we actually did partner on
19 certain aspects in particular during the financial
20 crisis, yes.

21 Q Okay. Good.

22 You attended meetings, I guess, when he

1 Q Absolutely.

2 A -- once we discussed it.

3 Q And do you remember before you were even
4 nominated, discussing with Secretary Ross the
5 specific responsibilities or jurisdiction of the
6 Under Secretary For Economic Affairs?

7 A I don't recall.

8 Q Okay. When do you think it was the first
9 time that you found out that one of the three
10 branches that the Under Secretary supervises is
11 the Census Bureau?

12 A Early on, early on.

13 Q Sure. I mean, one of -- there are just
14 three major branches, right, that the Under
15 Secretary For Economic Affairs supervises?

16 A Yes. Yes.

17 Q All right.

18 A Well, it's really -- it supervisors ESA,
19 and ESA supervises two branches.

20 Q Fair enough.

21 A So I don't want to -- a little bit of
22 semantics, but there is a nuance difference, and

1 so I don't want to misrepresent.

2 Q Okay. I appreciate that. When do you
3 think it first occurred to you that this would be
4 an important job, in part, because Census Bureau
5 was going to do the 2020 census and fairly soon
6 you'd be involved in that process?

7 A Oh, absolutely understood. It was a huge
8 program, and it was a management responsibility.

9 Q And you understood that even before you
10 were officially nominated?

11 Go ahead. You have to answer.

12 A Yes, sir. But allow me to say, as I have
13 learned more, it has certainly -- the gravity of
14 the position has -- you know, I always recognized
15 the importance.

16 Q Sure. Okay. So it's fair to say that by
17 the spring of 2017, you knew you were going to be
18 nominated for a position which would have, among
19 other things, significant responsibility for the
20 2020 census?

21 A Yes, sir.

22 Q Now, when do you think you first talked

1 priorities, you were talking about the president,
2 right?

3 A So if I can back up, I need to clarify my
4 last answer. Because we -- you said that I went
5 and spoke specifically of the census throughout
6 the rest of the document, and that is not correct.
7 Because I also indicate economical statistical
8 programs, which have -- would have included BEA
9 programs, such as GDP and recreational numbers and
10 things like that. So I have to clarify my
11 original answer that I said it was only specific
12 to census. That is not true.

13 Q Let's go back to that phrase about, "one
14 of his priorities is effective and meaningful
15 management and oversight of the 2020 census."

16 The context there was one of the
17 President's priorities, right?

18 A Yes. The --

19 Q How did you learn the President's
20 priorities with respect to the census?

21 A When I interviewed with the White House
22 under PPO, during the process -- and we knew what

1 the role was at that point, had been clarified.
2 The census was one of the portfolio
3 responsibilities of that role, and they said that
4 was an important -- that was -- that it was
5 important. As well as the Secretary reiterated
6 that that was a priority of the Department, and it
7 was priority.

8 Q And, specifically, it was a priority of
9 the President, it was one of his priorities was
10 managing the 2020 census, right?

11 A Yes.

12 Q Okay. What specifically did you
13 understand the President's priorities to be with
14 respect to the 2020 census?

15 A Complete and accurate count.

16 Q As complete and as accurate as it could
17 be?

18 A Complete and accurate.

19 Q And you always understood sometime in
20 that spring or summer, that one of the priorities
21 of the White House was adding a citizenship
22 question, correct?

1 MR. GARDNER: Objection. Lack of 602

2 foundation.

3 THE WITNESS: I said that I learned it

4 was a priority of the Secretary's.

5 BY MR. GROSSI:

6 Q Okay. Did you -- did the Secretary tell
7 you that he was interested in it, in part, because
8 it was also one of the President's priorities or
9 perhaps he used the phrase the White House's
10 priorities?

11 A No.

12 Q He never, ever has told you that one of
13 his reasons for wanting the census question added
14 was because the White House staff thought that was
15 a good idea?

16 A No.

17 Q Never?

18 A Not to my recollection, no.

19 Q Do you think it's possible and you just
20 don't recall at this moment?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: No, not -- not to my

1 recollection.

2 BY MR. GROSSI:

3 Q You talked to the Secretary quite a bit
4 about the census -- citizenship question over the
5 year, right?

6 MR. GARDNER: Objection. Lack of
7 foundation.

8 BY MR. GROSSI:

9 Q Well, you have talked to the Secretary
10 about adding the citizenship question, correct?

11 A Yes. Correct.

12 Q How often would you say?

13 A In May -- and I apologize if this is a
14 little long-winded.

15 In May, after the GAO report, and I came
16 in August, the immediate -- my immediate
17 responsibilities were to address the issues in
18 that GAO report, which talked about the budget,
19 the leadership and the operational readiness and
20 those things. And there -- we were also at that
21 same time preparing for the 2018 end-to-end test,
22 which started this past April 1st.

1 So as I came in, those were the
2 priorities we -- we spent time on and that I
3 operationally spent time on as we went through
4 when I started my work.

5 So I would suggest to you between August
6 and beginning of November, we spent time on the
7 lifecycle cost, the lifecycle budget, the
8 budgetary issues.

9 We also spent a tremendous amount of time
10 in the October, beginning of November -- November
11 time frame, on the management of the census,
12 because we were moving from research and
13 development to actual execution, if you will. And
14 so we spent time on the leadership and what was
15 happening there.

16 And then, thirdly, we spent time
17 throughout that entire process on operational
18 readiness, systems readiness, responding to the
19 GAO report, making sure we were prepared, making
20 sure we had everything in line to start the test
21 and there were other decisions that needed to be
22 made. So at -- I did know the citizenship

1 question was going to be on there, but that was an
2 issue that I didn't need to deal with until later
3 on, because they -- in a time frame, other issues
4 needed to get addressed immediately --

5 Q Okay.

6 A -- from an operational perspective.

7 Q So your recollection is as early as May,
8 you had heard about the citizenship question, but
9 it was only one feature of an overall review of
10 the census that kept you busy?

11 A And --

12 MR. GARDNER: Objection.

13 Mischaracterizes the witness's testimony.

14 BY MR. GROSSI:

15 Q Correct?

16 A No. It was not part of the review I was
17 doing on the census at that time.

18 Q But you knew that adding a citizenship
19 question was something that Secretary Ross wanted
20 to do, right?

21 A At -- yes.

22 Q Okay?

1 various responsibilities, that adding a
2 citizenship question was a topic under discussion,
3 correct?

4 A I'm sorry. Please repeat the question.

5 Q As of July 2017, when you testified to
6 Congress, you knew that the potential of adding a
7 citizenship question to the 2020 decennial census
8 was under consideration by Secretary Ross,
9 correct?

10 A I do not know exactly when I learned
11 that. It is very plausible I did know it by that
12 time.

13 Q Okay. Who was responsible for helping
14 you prepare for this testimony in your nomination
15 process at Commerce?

16 A The Legislative Affairs department is
17 responsible for helping the process. And so in
18 that process, I was assigned three individuals to
19 help me go through the process. And those three
20 individuals I worked -- I worked -- let's say four
21 individuals, one was the senior, but assigned the
22 three, four, and then that was who I was assigned.

1 A They were all public documents. They
2 have a quarterly review, a PMR they call it, for
3 the census. On a quarterly basis, they would --
4 provided me all those public documents so I could
5 review them, ask questions, and then they provided
6 me the websites for the 2020 census. Census has a
7 very large website, and so they provided me all
8 the website information, and so we looked at that.
9 I was only provided public information.

10 Q Okay. Let me have this exhibit marked as
11 Exhibit 2.

12 (Plaintiffs' Exhibit 2, Email chain, was
13 marked.)

14 BY MR. GROSSI:

15 Q Okay. Secretary Kelley, this is an email
16 chain, Exhibit 2, begins with the Bates 1404 and
17 runs to 1406, and like all of those email chains I
18 think we'll be doing today, it goes in reverse
19 order. As you know, they keep piling on top.
20 So I'm going to go to the end first, and
21 ask you if it refreshes your recollection that on
22 or about July 24, 2017 you had communicated in

1 some fashion with Mr. Willard, asking for a review
2 of the process of how questions are created and
3 chosen for the ACS. Do you remember making that
4 type of inquiry through Mr. Willard?

5 A Yes.

6 Q Okay. And then he enlisted the help of a
7 Victoria Velkoff. You know her? Or at least you
8 know her now?

9 A I know her now, Tori.

10 Q Right.

11 A She goes by Tori, yes.

12 Q Tori. And she works at Census?

13 A And, in fact, I'm sort of amazed -- I'm
14 saying, oh, there's -- that -- I didn't know that
15 was Tori.

16 THE WITNESS: Does everybody have this
17 paper in the room?

18 BY MR. GROSSI:

19 Q Anybody who has it, needs it.

20 And then Mr. Willard refined his request
21 above and said, "What we would primarily like to
22 discuss with you today, is the" -- "is how the

1 process works to when questions are discussed and
2 are approved to be used on the ACS and also those
3 on the census questionnaire."

4 Does that refresh your recollection, that
5 one of the things that you discussed with
6 Ms. Velkoff, perhaps, and Mr. Willard, in
7 July 2017, was specifically how questions are
8 added to a decennial census questionnaire?

9 A Yes.

10 Q Okay. So we're clear, that as of late
11 July 2017, you had a specific interest in how a
12 question would be added to the decennial census,
13 correct?

14 A As it applied to a particular topic that
15 was being discussed.

16 Q And what topic was that?

17 A The SOGI topic.

18 Q Just the SOGI topic?

19 A Yes.

20 Q You didn't know that they were also
21 dealing at that same time with a citizenship
22 question?

1 A I --

2 MR. GARDNER: Objection to form.

3 THE WITNESS: I was --

4 BY MR. GROSSI:

5 Q Is that your testimony?

6 A I was dealing -- this has to do with the
7 SOGI question.

8 And would you like me to explain?

9 Q I don't need to know about that. I just
10 need to make it clear that your conversation was
11 also at a time when you knew they were thinking
12 about adding a citizenship question, as well.

13 MR. GARDNER: Objection.
14 Mischaracterizes the witness's prior testimony.

15 BY MR. GROSSI:

16 Q I mean, it can be both, Sec- --
17 Ms. Madam Secretary?

18 MR. GARDNER: Objection. Form.

19 THE WITNESS: Sir, you're going to have
20 to go back. Because you're starting to tie things
21 together with ends and -- you know, ands and buts
22 that I'm not following.

1 This topic, let me be very clear, had to
2 do with the SOGI issue. I was going to be -- I
3 was going to be asked a SOGI question on the -- at
4 the testimony. There was a -- the topics -- and
5 I'm sorry if I'm boring you and you all know
6 this -- the topics for inclusion in the census
7 need to be given the March prior, so not March of
8 '18 but March of --

9 Q '19?

10 A -- '17.

11 BY MR. GROSSI:

12 Q '17, right.

13 A And there was an issue whether there
14 would be a SOGI question or not. And when I was
15 told I was going to be asked about that, I said I
16 would like to know the process. Topics go on. I
17 did not know the details to know how the topics
18 get put on it, and then it's a year later, the
19 questions get put on it, and how does that work?
20 And I asked for that information in regard to the
21 SOGI question.

22 Q Were you also advised that at that point

1 in time, Mr. Ross -- Secretary Ross was being
2 approached by various people to put a citizenship
3 question on --

4 A No.

5 Q -- the 2020 census?

6 You're very confident that he never told
7 you that?

8 A I don't know. And I've repeated that. I
9 don't know when I learned that information. And
10 I'm very sorry I don't, but I don't.

11 Q Okay. Let's see if we can maybe do a
12 little refreshing.

13 I'm marking as Exhibit 3,
14 Bates Number 0763-64, which is an email chain,
15 again, that runs from July 14, 2017 to
16 July 24, 2017.

17 (Plaintiffs' Exhibit 3, Email chain, was
18 marked.)

19 BY MR. GROSSI:

20 Q Before we begin this, just one quick
21 follow-up question on the last bit of testimony.
22 Was that --

1 A May I finish reading this?

2 Q Oh. I'm sorry. Go ahead.

3 A Yes, sir.

4 Q Before we turn to the exhibit, I just
5 want to follow up on one thing.

6 The SOGI topic that you mentioned a
7 moment ago, was that topic being considered and
8 included in the ACS or also in the decennial
9 census?

10 MR. GARDNER: Objection. Form.

11 THE WITNESS: I was not there at the
12 time, but there was a discussion at the time that
13 the information was going on the topics as to
14 whether or not that would be a topic back in
15 March of '17 that would be put forth when the
16 topics are put forth.

17 BY MR. GROSSI:

18 Q For the -- for the ACS study?

19 A I don't know which -- which, but that was
20 pulled as a topic being discussed.

21 Q Okay.

22 A And, therefore, there was a discussion

1 about the SOGI issue and how it would -- why it
2 was pulled, why it was not pulled, why it was on
3 there. There was a whole myriad of discussion
4 around it. Of course, I knew nothing about that
5 topic. So I, just for an educational purpose,
6 said if I'm going to ask, I wanted to learn how
7 this works. Going from a topic to inclusion on
8 any or either, it didn't matter to me. How does
9 this happen?

10 Q But you're not testifying that you were
11 ever told that the SOGI topic would be included on
12 the decennial census, correct?

13 A I am not testifying to that.

14 Q And so when Mr. Willard said you were
15 interested in how citizenship -- how questions
16 were added to the decennial census, that was
17 somewhat broader than the SOGI topic, correct?

18 A No. It was written in regards to the
19 SOGI topic.

20 Q Okay. Let's take a look at what's been
21 written in regard to Exhibit 3.

22 A Yes.

1 BY MR. GROSSI:

2 Q Okay. Let me actually turn to that.

3 MR. GARDNER: Tell you what, Counsel,
4 before we go to the next document, take a break?

5 MR. GROSSI: Sure.

6 MR. GARDNER: We've been going about an
7 hour.

8 VIDEOGRAPHER: This concludes Media Unit
9 Number 1. The time on the record is 10:06 a.m.
10 We are off the record.

11 (Off the record.)

12 VIDEOGRAPHER: This begins Media Unit
13 Number 2. The time on the video is 10:18 a.m. We
14 are on the record.

15 (Plaintiffs' Exhibit 4, Supplemental
16 memorandum, was marked. Plaintiffs' Exhibit 5,
17 Defendants' objections, was marked.)

18 BY MR. GROSSI:

19 Q Secretary Kelley, I'd like to hand you
20 two exhibits. The first is Exhibit 4, which is
21 supplemental memorandum by Secretary of Commerce
22 Wilbur Ross, has Bates number 1321. And I will

Pl. Objection: No
testimony of the
witness has
been
designated.

1 also give you a copy as Exhibit 5 of the
2 defendants' objections and responses to
3 plaintiffs' first set of requests of
4 interrogatories. And I've tabbed Page 14, and
5 I'll let you know that that's the only page I'll
6 be asking you about.

7 MR. GARDNER: Peter, you said 14?

8 BY MR. GROSSI:

9 Q Okay.

10 A No. Where on --

11 Q Just on the bottom --

12 A Where on Page 14 do you want me to --

13 Q The list of names at the bottom, and I'll
14 direct your attention to it and give you plenty of
15 time.

16 A The list of names at the bottom?

17 Q Yeah.

18 A Okay. And then -- yes, sir.

19 Q Okay. Do you see in Exhibit 4, this is a
20 supplemental memorandum? Have you seen this
21 document before?

22 A One other time.

1 Q When was that?

2 A Yesterday.

3 Q Okay. Not before it was issued?

4 A No. I was not part of the issuing of
5 this.

6 THE WITNESS: I'm sorry. Did you not
7 hear me? I -- did you hear me? I apologize.
8 Speak up?

9 MS. BOUTIN: Just a little bit.

10 THE WITNESS: I'm sorry. And usually I'm
11 very loud, so I apologize. I -- I --

12 BY MR. GROSSI:

13 Q Do you know why this supplemental
14 memorandum was added to the record so late as June
15 of this year?

16 MR. GARDNER: Objection. Lack of
17 foundation.

18 THE WITNESS: To supplement the
19 information is my assumption.

20 BY MR. GROSSI:

21 Q The information that Congress was
22 concerned about after they learned that people,

1 other Census and Commerce Department officials,
2 had talked about the citizenship question,
3 correct?

4 MR. GARDNER: Objection. Lack of
5 foundation.

6 THE WITNESS: To supplement the
7 memorandum of the Secretary regarding the
8 administrative record.

9 BY MR. GROSSI:

10 Q You were involved in that original
11 memorandum, correct, March 26th?

12 A Which memorandum are you speaking, sir?

13 Q The March 26, 2018 memorandum of
14 decision.

15 A The decision memorandum to me.

16 Q Okay. Right. But you were also
17 involved -- you were actually involved in its
18 preparation, correct?

19 A I was involved in the proofing, not the
20 preparation.

21 Q Okay. You didn't actually draft any
22 portions of it?

1 A No.

2 Q You weren't asked for your input before
3 it was essentially put in the final form?

4 A I -- I looked at it over the few days
5 before it was released, in proofing it.

6 Q What changes did you make?

7 A I don't remember. Minor changes. I
8 don't remember anything substantive.

9 Q How about any other people in the
10 Census Bureau, did they make any changes?

11 A The Census Bureau?

12 Q Yes.

13 A The Census Bureau made a few -- a few
14 changes, but, again, nothing substantial.

15 Q They had not been involved in drafting
16 it, correct?

17 A Could --

18 MR. GARDNER: Objection to form.

19 THE WITNESS: Could you define the word
20 drafting? To me, anything up to a final form is
21 still in draft. So you're -- I don't want to get
22 balled up with your nomenclature. To me, anything

1 A In preparation for my -- my hearing.

2 Q Okay. And you -- did you communicate
3 with any of those people by email?

4 A No. They were communicated by -- with
5 the people at -- the four people that worked with
6 me. I didn't have an email at Commerce at that
7 time.

8 Q I understand. You had an email at
9 Invesco or your personal email account?

10 A Right. And we did not -- we did not
11 email.

12 Q But we haven't checked that out yet,
13 right?

14 A Right.

15 Q Okay. Well, let me just ask about
16 Exhibit 7, in the hopes it might refresh your
17 recollection about other things.

18 Do you recall hearing, perhaps when you
19 came in in late August, that Secretary Ross was
20 attempting to get the Department of Justice to
21 request that the citizenship question be added?
22 And maybe it's August, maybe it's September of

1 2017, when you first came on board.

2 A No. I was not aware of that.

3 Q You didn't know that he was attempting to
4 get people at the Department of Justice to say
5 they wanted a citizenship question?

6 A I knew he was in conversation with
7 people, but you said that he was trying to get
8 them to do something. I have no -- what the
9 Secretary tried to get people to do or try to do.

10 Q Is that another question that we could
11 ask Secretary Ross --

12 MR. GARDNER: Objection. Form.

13 BY MR. GROSSI:

14 Q -- best?

15 MR. GARDNER: Calls for speculation.

16 BY MR. GROSSI:

17 Q Would Secretary Ross be the best person
18 to ask about what Secretary Ross was doing with
19 the Department of Justice on this issue?

20 A I would always say that -- best to ask
21 the person that you're speaking about questioning.
22 I don't exactly know how to answer that. I mean,

1 just as we asked Karen what I said, which was on
2 the record.

3 Q Let me have marked the next exhibit.

4 (Plaintiffs' Exhibit 8, Email, was
5 marked.)

6 BY MR. GROSSI:

7 Q We're marking as Exhibit 8 a
8 memorandum -- I'm sorry -- an email. The top one
9 of which is dated August 16, 2017.

10 Now, this email indicates that
11 Mr. Earl Comstock wrote to Secretary Ross on
12 August 11th and he stated, quote, per your
13 request, here is a draft memo on the citizenship
14 question that James Uthmeier in the Office of
15 General Counsel prepared and I reviewed. Once you
16 have had a chance to review, we should discuss so
17 we can refine the memo to better address any
18 issues.

19 And it appears that Ms. Teramoto then
20 followed up on that by saying that Peter Davidson
21 and Karen Dunn Kelley will both be here Monday.
22 Let's spend 15 minutes together and sort this out.

1 And then Mr. Comstock responded to
2 Ms. Teramoto and to Secretary Ross by copy saying,
3 "Thanks, Wendy, that works for me."

4 Now, Wednesday was August 16th, and I'll
5 represent that the Monday was August 20th. Is
6 that consistent with your recollection that you
7 came in on August 20th and had a discussion about
8 various things?

9 MR. GARDNER: I think your math is wrong.

10 THE WITNESS: Sir, I think it was the
11 21st.

12 MR. GARDNER: The 21st.

13 THE WITNESS: August 21st. Or I said the
14 wrong date before, as well, so we have to correct
15 Monday -- Monday was the 21st.

16 BY MR. GROSSI:

17 Q You're right. Absolutely right.

18 So Monday was the 21st, and that's the
19 day you came in and assumed your position, okay.

20 And so you discussed with them on
21 August the 21st, among other things, I'm sure, the
22 draft memo on the citizenship question that had

1 been prepared for Secretary Ross, correct?

2 A I do not recall any conversations like
3 that.

4 Q Do you think that might have been the
5 first time you really got into the details of
6 adding it?

7 A I don't recall a conversation about it.

8 Q Okay. But you wouldn't deny that as of
9 August 21st, you had been briefed on the
10 citizenship issue?

11 MR. GARDNER: Objection. Mischaracterize
12 the witness's testimony.

13 THE WITNESS: As I said, I do not,
14 unfortunately, remember when I first learned about
15 it. It is possible. I'm not denying it. I'm not
16 confirming it. I just don't know. I wish I
17 could -- I wish I could tell you. I just don't
18 know.

19 BY MR. GROSSI:

20 Q Did you receive memoranda about the
21 citizenship question, and that's a shorthand of,
22 obviously, adding a citizenship question to the

1 BY MR. GROSSI:

2 Q Were you relying on the experts in the
3 Census Bureau?

4 A I was not relying on anything, but I rely
5 heavily on the experts at the Census Department
6 for many things. But in terms of your question,
7 was I relying on it for the citizenship question?
8 That preassumes that I'm answering the
9 question -- I'm making the decision, and I was not
10 making the decision.

11 Q Other than Secretary Ross, as the
12 Secretary, and the people in the Census Bureau, as
13 the experts, who else decided who else made
14 recommendations concerning whether or not there
15 should be a citizenship question?

16 A In October -- in December, when this
17 came, that the question needed to be evaluated and
18 a discussion about whether the question would be
19 on the 2020 -- 2020 form of questions going to
20 Congress in March of '18, I spoke to the senior
21 people at the Census, the senior team. And I
22 said, we have this letter. We need to now give

1 the Secretary all the information. He needs to
2 make this decision. And there are pieces of it,
3 and what is your recommendation? And when we
4 spoke to them, we said at the top of the house,
5 there needed to be a legal review. There needed
6 to be a technical/operational review and a policy
7 position. Those were the three major things that
8 needed to take place.

9 Obviously, the legal review being done by
10 the legal department. The Census handling the
11 technical and operational -- technical or
12 operational, whatever term you prefer, review, and
13 the combination of those plus auxiliary
14 information that would be provided would create
15 the ability for the Secretary to make a policy
16 position on that.

17 Q And that was something you did in
18 December of 2017, after you received a letter from
19 the Department of Justice; is that right?

20 A All of those things?

21 Q Yes.

22 A What we did in December and at -- what we

1 did in December is came up with a strategy on how
2 to -- how to work through this process, working
3 very much with Census, because I went to them and
4 said, have we done this before -- you know, you
5 always go back, have we done this before, how do
6 you do it, what do we think about it? And, of
7 course, the answer is no, this really -- there was
8 not precedence on it.

9 And that's where we said, okay, at the
10 top of the house has to have a legal review, a
11 technical/operational review and then that leads
12 to a policy decision or policy review.

13 And so we then said okay, if, in fact,
14 the question needs to be to Congress, by law, on
15 March 31st, which -- and not that I want you to
16 think I'm a walking calendar, because I've already
17 made mistakes -- but March 31st was the date that
18 it has to legally be there, that happened to be
19 Good Friday. So for courtesy, you would bring it
20 to them on the Thursday. So we sort of walked
21 back and said, what are we going to do over the
22 next months?

1 Q Or did you?

2 A I don't recall.

3 Q Do you think you might have discussed
4 with it Mr. Jarmin?

5 A We certainly laid out what events had to
6 take place through next March, and we sort of
7 looked at that big timeline of what had to happen.
8 And when the conversations of the questions needed
9 to get to Congress by the 31st, I can't recall if
10 there was a discussion on that.

11 Q Let me be very clear. You testified a
12 moment ago, I thought, that it was the
13 Department of Justice letter in December that
14 prompted you to call in Mr. Jarmin and others in
15 the Census Bureau and ask for their input on the
16 citizenship question, correct?

17 A It was that letter that -- that we then
18 sat with the people from the Census Bureau to say,
19 it's coming up in March now. We've got this
20 letter. We need to address how do we do this,
21 what is the process that would take place and the
22 strategy around how to make this happen.

1 exhibit.

2 (Plaintiffs' Exhibit 9, Email, was
3 marked.)

4 BY MR. GROSSI:

5 Q Exhibit 9.

6 Exhibit 9 is an email chain that begins
7 on August 29th where Mr. Davidson wrote to
8 Mr. Hernandez, Comstock, Uthmeier and other names
9 that have been blocked out, as well as a copy to
10 Ms. Teramoto.

11 A Excuse me. Are they other names or are
12 they just simply the email addresses?

13 Q I'm not sure. I really don't know.

14 It says, "The Secretary asked to set up
15 briefing" -- "a briefing on some key legal issues
16 he is concerned about." And the overall subject
17 line is census. "Can we get something on the
18 books for next week when Izzy returns. I can't
19 find Karen in the directory, but she should be
20 included, as well." And then there is additional
21 information about scheduling leading to an email
22 from a Chelsey Neuhart -- haus to various people

1 indicating that she wanted to confirm that the
2 attendees at the next census briefing regarding
3 legal questions should be Ms. Teramoto,
4 Mr. Hernandez, Mr. Comstock, Mr. Uthmeier,
5 Mr. Davidson and you, Ms. -- Secretary Kelley.

6 Now, we have not been provided with any
7 information about what the subject matter was,
8 other than it has been produced in the case. And
9 what I want to ask you is: Do you recall in late
10 August 2017, attending a meeting where legal
11 issues involving the census were discussed?

12 A No. I do not recall that.

13 Q Do you think it's possible --

14 A I do not remember is what I said. I
15 apologize.

16 Q Is it possible that one of those legal
17 issues was this question you mentioned about the
18 legal implications of adding a citizenship
19 question to the census?

20 MR. GARDNER: Objection. Form.

21 THE WITNESS: Sir, I don't remember the
22 meeting. I don't know that the meeting got

1 cancelled, took place, whether I could be there or
2 not be there. So for me to speculate, at all, as
3 to what was discussed or not discussed would be an
4 erroneous things. I just have no recollection of
5 this whatsoever. And even if there was a meeting,
6 did I get called to something -- I just don't
7 know. I would be speculating if I said anything
8 to this.

9 BY MR. GROSSI:

10 Q And you don't recall specifically on the
11 last page, what legal issues -- key legal issues
12 Secretary Ross was interested in pertaining to the
13 census at about this time? Doesn't refresh your
14 recollection?

15 A No, it does not, sir. It does not. I'm
16 sorry. It does not.

17 Q Let's take the next one.

18 (Plaintiffs' Exhibit 10, Email, was
19 marked.)

20 BY MR. GROSSI:

21 Q I marked as Exhibit 10, 9799 and 9800.
22 It's an email sent to Karen Kelley on

1 December 5, 2017 from Mr. Willard. The subject is
2 items to cover with Izzy. I'm just going to refer
3 you to one portion of it. It says, "Karen, please
4 find below and attached a list of items to cover
5 with Izzy today."

6 And I'm going to direct your attention to
7 the 11th numbered item on the second page, which I
8 will read that says, Higgins amendment: House
9 Rules committee considering today, at 4:00 p.m.,
10 an amendment that would block all fiscal 2018
11 funding for the 2020 decennial census unless the
12 survey includes questions about residence,
13 citizenship and immigration status. The amendment
14 comes amid concerns that the 2020 census is
15 already in danger of being underfunded, unquote.

16 Do you recall attending a meeting and
17 discussing with Mr. Hernandez and others the issue
18 of adding a census question to the 2020 census,
19 either in context of the Higgins amendment or
20 anything else in September 2017?

21 A Allow me to take a look at this email,
22 please.

1 BY MR. GROSSI:

2 Q Sure. My question, again, is: Whether
3 this refreshes your recollection that on or about
4 September 5th, you were meeting with various
5 people at the Commerce Department to talk about,
6 among other things, an amendment that would block
7 fiscal funding unless a citizenship question was
8 added to the 2020 census?

9 A I do not recall this document, at all,
10 but at the beginning, we were meeting with several
11 people. And, in fact, you can see in here it
12 says, "Izzy also confirmed that there is a 3:30
13 p.m. with the Secretary to discuss the budget,"
14 which I said has -- a big topic and one I was
15 spending a lot of time on.

16 I -- I will tell you that there were a
17 lot of topics on this discussion -- on this
18 agenda, and I cannot confirm or deny that they
19 took place. The meeting was scheduled once and
20 then rescheduled, so I couldn't even tell you that
21 this meeting actually took place, to my
22 recollection. But I'm not saying to you these

1 would not have been topics we would have
2 discussed.

3 Q You might have been discussing adding a
4 citizenship question as of September of 2017?

5 A Well, if we went through this agenda and
6 actually got through it all, we would certainly
7 have been discussing the Higgins amendment, which
8 would have made sense, because you would have been
9 discussing topical news on the -- on the census.

10 Q And that would have a big impact on the
11 census, right, in terms of its funding? That's
12 what the message says.

13 MR. GARDNER: Objection. Lack of
14 foundation.

15 THE WITNESS: Sir, I -- the last thing I
16 want to do is be, at all, argumentative with you.
17 But it says, "The amendment comes amid concerns
18 that the 2020 census is already in danger of being
19 underfunded."

20 So it sort of dissects those and says
21 there is already a concern here and now this has
22 come up.

1 BY MR. GROSSI:

2 Q Because the amendment would have not
3 funded the census, at all, if it didn't have this
4 question?

5 A It certainly would be a problem, wouldn't
6 it?

7 Q Right. And do you remember discussing
8 that issue?

9 A No. I do not. Do not.

10 Q Is there anybody on this email that you
11 can identify as a member of the Census Bureau?
12 Just a minute.

13 A Repeat your question, sir.

14 Q It's simply, are there any of the names
15 on this as people who were aware of this meeting
16 or attended this meeting who were members of the
17 Census Bureau?

18 MR. GARDNER: Objection. Lack of
19 foundation.

20 THE WITNESS: The memo came to two
21 people, myself and Aaron Willard.

22 BY MR. GROSSI:

1 saying I wasn't there. I'm not denying it. I'm
2 not confirming it. I'm saying I wasn't there, so
3 I, therefore, cannot answer who was at the
4 meeting.

5 BY MR. GROSSI:

6 Q Do you recall, at all, telling people
7 such as Mr. Hernandez or Mr. Willard that if they
8 were considering matters of great importance to
9 the census, they should consult with Mr. Jarmin
10 and other people at the Census Bureau?

11 A That question is out of context of this
12 memo, but from August 21st when I showed up, we
13 consulted and had communication and conversation
14 all the time with the senior officials at the
15 Census, Dr. Jarmin included. We were -- I said
16 and we lived by we were going to live under
17 the -- we were going to be very communicative and
18 talk with them.

19 So your question was: Did I tell people
20 of anything of importance with the census -- to
21 talk with them? The answer is: We would have had
22 that conversation.

1 Q I'm sure. That's all I was trying to
2 establish. That, as a general rule, a general
3 policy, when issues of importance to the Census
4 were developed by people of Commerce -- I'm
5 distinguishing the superiors at Commerce -- your
6 role was to tell those people to discuss it with
7 the people at the Census Bureau, correct?

8 A That would have been my policy.

9 Q Yes. Right. But your best recollection,
10 and from all that we can tell and from what
11 Mr. Jarmin told us, you did not discuss adding a
12 citizenship question with Mr. Jarmin and other
13 people at the Census Bureau prior to
14 December 2017; is that also your best
15 recollection?

16 MR. GARDNER: Objection. Form.

17 THE WITNESS: My best recollection, which
18 I've told you, is that I don't remember when I
19 discussed that for the first time with the people
20 at Census. You then indicated that Dr. Jarmin
21 said -- you asked if I would say he was lying, I
22 said absolutely not. I would not say that. But

1 though, is, simply, he's saying he's going to drop
2 off some review materials, conveying that they
3 were physical. Do you remember him doing that?

4 A No. I do not.

5 Q Can't help us, at all, about whether you
6 ever saw a legal memorandum from him?

7 A I cannot help you, at all.

8 Q Now, before the break, we were talking
9 about some documents that showed that Mr. Comstock
10 was working with Mr. Ross to determine if the
11 Department of Justice had any interest in adding a
12 citizenship question. And what I'd like to
13 determine is whether, in fact, you knew anything
14 about that effort prior to the time that the
15 letter came over from Justice in December of 2017.

16 MR. GARDNER: Objection. Form.

17 BY MR. GROSSI:

18 Q So my question is: Did you know anything
19 about an effort to get the Department of Justice
20 to send such a letter?

21 A I knew there were conversations between
22 Commerce and Justice.

1 Q And did you know the substance of those
2 conversations, even in summary form?

3 A That it was about the citizenship
4 question, yes.

5 Q Okay. And that Secretary Ross was hoping
6 to get the Department of Justice to support a
7 request for such information, correct?

8 A And that's where you're taking it to I --
9 those are details that I do not know.

10 Q You just know he was discussing it with
11 the Department of Justice?

12 A Yes.

13 Q And you didn't have anything to do with
14 any of those discussions; is that right?

15 MR. GARDNER: Objection. Form.

16 THE WITNESS: No.

17 Are you asking me if I participated in
18 any of those discussions? The answer is:
19 Absolutely not.

20 BY MR. GROSSI:

21 Q And he didn't brief you of any of those
22 discussions in the fall of 2017?

1 been a cursory conversation with the
2 Census Bureau. I do not recall. I know when it
3 was -- when we were clear there was going to be a
4 letter, that I spoke with Dr. Jarmin and others at
5 the Census.

6 Q What about at the Department of
7 Homeland Security, do you recall being told that
8 Secretary Ross and Mr. Comstock and others were
9 attempting to elicit their support for a
10 question -- citizenship question?

11 A No. I do not know anything about that.

12 Q Did anybody --

13 A I'm not aware of that.

14 Q Nobody ever told you of an interest in
15 the Department of Homeland Security about having
16 Census include a citizenship question; is that
17 right?

18 A Not to my recollection, no.

19 Q Okay. And you don't recall hearing,
20 around Thanksgiving, around the end of November,
21 that Secretary Ross had finally lost patience with
22 the Department of Justice and needed to get

1 something from them to justify a citizenship
2 question? Does that ring a bell with you?

3 A No.

4 Q You never talked with Secretary Ross in
5 November about his frustrations with the
6 Department of Justice; is that right? Or is it
7 possible?

8 MR. GARDNER: Objection. Form.

9 THE WITNESS: Sir, you are -- I could
10 have been briefed. I could have been told that
11 there was frustration. We don't know if we're
12 getting a letter, but it was not -- it was not at
13 the top -- if I can use the -- you know, the old
14 -- front -- front burner, it was not a
15 front-burner issue. We had front-burner issues to
16 get ready for the '18 end-to-end test. We, at
17 that point, had a -- were in a situation where
18 AT&T protested the group that was using the
19 handhelds. So if we didn't get through the
20 protest, we wouldn't have handhelds for the '18
21 end-to-end test. So I apologize, but those were
22 top-of-the-house issues to me. That -- we were

1 dealing with those. We had so many fires to be
2 putting out on those kinds of issues that were
3 happening and the time frame prep -- getting ready
4 for the end-to-end test in April, those were the
5 topics we were -- I was spending my time on. So
6 if somebody over here said we're working on the
7 citizenship question and the Secretary is
8 frustrated, I would not know it. It would not be
9 top of my mind.

10 BY MR. GROSSI:

11 Q Were you surprised, though, they wanted
12 to add a question with all the rest of what was
13 going on and the need to test that question ahead
14 of time?

15 A Sir, you already asked me earlier. This
16 question was not for the end-to-end test.

17 Q Okay.

18 A We were prepping up for the end-to-end
19 test, which would then be, obviously, into the
20 2020 census.

21 Q But you said earlier you were concerned
22 or it was a difficult thing, because when you

1 Q What I've marked as Exhibit 13 is an
2 email from Mr. Jarmin to various people identified
3 by email addresses at the Census saying, as of
4 Friday, December 15, 2017 that he needed to huddle
5 with that staff and propose a time of 8:30 the
6 following morning -- the following Monday, which
7 would have been December 18th.

8 Do you recall Mr. Jarmin -- Dr. Jarmin
9 telling you that he would want to involve a number
10 of technical experts in evaluating the request to
11 add a citizenship question to the 2020 census?

12 A Yes.

13 Q What did he tell you?

14 A He told me he was going to get the team
15 together and come up with it.

16 Q Did he express surprise at that point
17 because he had not heard previously that this was
18 a possibility? What do you remember about that
19 meeting or phone call?

20 A Prior to -- so if you go down to this
21 December 15th bottom email, if you --

22 THE WITNESS: Does everybody have this

Pl. Objection:
Fed R. Evid. 403

1 paper?

2 Okay. If you go down to that
3 December 15th, what had happened was the
4 Department of Justice said they were sending a
5 letter, a letter was forthcoming. And I -- I
6 called -- I told the Census that a letter was
7 forthcoming, but they did not get it because they
8 sent it to the Department -- excuse me -- the
9 Census Bureau, not the Department -- they sent it
10 to the Census Bureau with a stamp, in the mail, in
11 the postal. Somebody, as a courtesy, legal to
12 legal, or whatever, as a courtesy, sent a copy to
13 the Department. So I asked that it got sent to
14 Dr. Jarmin and Enrique Lamas, who is also a
15 doctor. I don't want to be rude there.

16 So I asked that that be sent to them. So
17 they -- before -- you said were they surprised, so
18 before that, they knew something was coming. This
19 was what was sent with the -- with the note.

20 I -- I -- I'm -- I'm just reading it.
21 I'm like a little confused because it says, "I
22 understand the Department of Justice sent the

1 attached letter." But there's no attachment, and
2 this is a blank page, so maybe there's a --

3 Q Well, I can give you the letter --

4 A No. No. No. But I -- it was
5 attached --

6 Q Right.

7 A It was attached to this.

8 Q Right.

9 A And it's just not on here --

10 Q So the situation was --

11 A So I then sent them -- I had asked
12 Mr. Uthmeier to send them the letter, so they then
13 had the first chance to read it. But they knew it
14 was coming, so there was no shock in law [sic] in
15 that conversation.

16 He said -- we talked. He said, fine.
17 Let me get a group together. Let us think about
18 it. And we said at that point -- we had a
19 conversation between Ron Jarmin, Enrique Lamas and
20 myself -- and I don't want to tie it to any time
21 or date on this letter -- but at the time, I said
22 what -- I said, tell me historically what happens,

1 what do we do here? You're the technical experts.
2 Well, really, a question hadn't been added, but
3 they said the fundamental things that need to take
4 place is there needs to be a legal review, a
5 technical operational review and a policy decision
6 review from that. And that's the guiding
7 principles in how we had to work on it.

8 And so I said, fine, let's get thinking
9 about this, and we need -- you need to do your
10 thing as the experts at the Census. And from my
11 position, as a convener, if you will, having that
12 we need to put a -- a strategy, as I said earlier,
13 in place, so that we can back up to the date of
14 the 31st of March, which was very much what we did
15 on many things.

16 There were other decisions that the
17 Census had to make by certain dates, such as race
18 and ethnicity, and other decisions that needed to
19 be done, such as where to count certain -- certain
20 groups, and all of those things would have a date
21 they need to be done by here, how do you back up
22 so we can get all the information? So this took

1 on the similar process.

2 Q And who --

3 A Does that help answer your question?

4 Q Yes. Thank you.

5 And who was it that said there should be
6 a legal review?

7 A I asked the Census, and it was a
8 conversation I had with the Census. So I don't
9 remember exactly who at the table said this is
10 what needs to happen, and that's when I said,
11 okay, so that's the guiding principles that we
12 should work from.

13 Q And I want to flesh that out. What sort
14 of legal review do you recall them discussing?
15 What needed to be reviewed? What aspects of
16 legalities?

17 A The rule of thumb on -- at the
18 census -- and, again, I'm not giving
19 you -- I'm -- I'm not a Census employee for
20 30 years, and I'm not a technical expert on these
21 things, and I am not a lawyer, okay.

22 So in a very layman's terms, the rule of

1 thumb when we looked at legal reviews was two
2 things. Number 1, is there a statutory reason or
3 a program-added reason that this question that
4 this -- that this should happen? And that was
5 some of the things we talked about.
6 Whether -- and I am not a lawyer, so handing it to
7 legal guys -- if there was further review they
8 wanted to do, but that was two things that was --
9 that were always important.

10 Q And who made that legal review at Census
11 or for Census?

12 A That was done by the legal team, and I
13 know there were a number of lawyers on it. I
14 can't speak to all of them.

15 Q Who? Give us the name of the people you
16 recall.

17 A I just said there was a number of people
18 involved, and I can't speak to all of them.

19 Q But do you know any of them?

20 A Sure. Some of them would have included
21 Barry Robinson, who was with Census.
22 Melissa Creech -- Creech, I think is how you

1 A They were absolutely involved. To my
2 knowledge sound -- absolutely sounds --

3 Q And you saw copies of those memorandum?

4 A No. I did not. Well, I did -- I saw
5 some documents. So I -- but I -- I was not an
6 expert on those documents.

7 Q Okay. Now, we're going to go right now,
8 in a few minutes, into the technical aspects that
9 were mentioned, and I think you're going to
10 hear -- see a number of memoranda in January and
11 February of 2018.

12 With that as background, do you remember
13 when you saw or knew about the legal reviews? Was
14 it before, in the same time frame or after you
15 knew about the technical reviews?

16 A I would -- I would want to leave the
17 group with the understanding that there were
18 paths -- two simultaneous paths going on. There
19 was a legal review happening. There was a
20 technical review happening. And that was
21 informing the policy review.

22 Q And you had understood determining

1 whether it was statutorily mandated or appropriate
2 was something that was normally done when a new
3 census -- citizenship question was asked -- I'm
4 sorry -- when a new census question was asked?

5 A That was my understanding from the
6 technical experts at the Census.

7 The -- it was also my understanding that
8 the Census lawyers and the Department lawyers
9 worked together.

10 Q I'm going to mark as Exhibit 14 another
11 email from the same day, the same time.

12 (Plaintiffs' Exhibit 14, Email, was
13 marked.)

14 BY MR. GROSSI:

15 Q And this is from Enrique Lamas. He is
16 the assistant director of the Census, correct?

17 A He is the acting assistant director, sir,
18 to be technical.

19 Q And it's to, again, Mr. Willard, that
20 we've talked about, but also cc's to Mr. Jarmin,
21 and he's responding to an earlier email from 12:01
22 from Mr. Willard saying, "Hey, guys. Karen got a

1 call from the Secretary and has an update for all
2 of you. If you can step away from the FESAC" --
3 F-E-S-A-C -- "it is regarding a letter from the
4 Department of Justice," unquote.

5 Do you recall getting a call from
6 Secretary Ross presumably either on or shortly
7 before December 15th?

8 A I don't recall what this is about. I
9 don't recall what this is about, but --

10 Q Well, it says it is regarding a letter
11 from DOJ.

12 Do you see that?

13 A And if you see the page before, which
14 your handed me, and the bottom, which I
15 articulated to you that I asked James Uthmeier
16 that -- and I told you -- it doesn't say it
17 here -- but that James sent them the letter that
18 afternoon, the -- the problem with making
19 assumptions or speculating is that I could be
20 totally wrong. So I am -- I -- I don't
21 necessarily want to do that.

22 But if I were to be making an educated

1 guess, would you tolerate an educated guess --

2 Q Yes, please.

3 A -- that could be wrong?

4 I learned we had the letter. I said
5 let's get those guys, but they're in the FESAC
6 meeting, which is federal economic statistical
7 committee, so it's an important committee, so I
8 didn't want to -- if they could come out, and that
9 we would -- we got the letter, we will send it to
10 them.

11 That would be me taking a -- seeing these
12 things and saying -- but do I specifically
13 remember this? No, I can't tell you I do.

14 Q Okay. That was helpful. So what you're
15 saying is you do -- do you remember calling them
16 out of a meeting that was important?

17 A No. That's -- that -- that says if you
18 can step away the FESAC. That means if there's a
19 break or whatever. I am extremely respectful of
20 these guys, and I think you've met Dr. Jarmin and
21 you've met Dr. Abowd. These guys are brilliant.
22 They are hard working. They are incredible. I

1 don't call them out of anything. I say when you
2 can speak to me, I appreciate. No. No. No. I
3 would never call anybody out of anything, sir.

4 Q So this was a relatively unusual thing,
5 for you to be pressing on their time in this way,
6 right?

7 A Yes.

8 Q What was it that Secretary Ross told you
9 was so important?

10 A As I said, sir, I don't remember -- and,
11 also, I didn't write this. So people love to use
12 the Secretary's name in the vernacular of, the
13 Secretary called. It could have been the
14 Secretary's office. It could have been somebody
15 in connection. So people love to use that,
16 Number 1. Whether the Secretary called or not, I
17 can't speak to that, okay.

18 And all I'm trying to do is say from this
19 document, because I generically remember what
20 happened, that we got the letter. They did not
21 get the letter until later, because it came with a
22 post stamp on it, and I felt very strongly as soon

1 A I do not recall.

2 Q Okay. But what you did was you turned to
3 your experts in the Census Bureau, correct?

4 A That is correct. Because what I felt
5 was -- you are characterizing this as the
6 Secretary put pressure on me to make this a
7 priority at the Census. Once I told the Census
8 this letter was somewhere in the works and they
9 hadn't got it yet, it was priority for them to get
10 it, and it was priority to service the
11 Census Bureau and --

12 Q And that's --

13 A -- the executives.

14 Q And that's what, then, you did?

15 A That's what I did.

16 Q And in January, February, March, you
17 worked with the Census Bureau people to prepare
18 drafts and respond to various questions of
19 Secretary Ross concerning the addition of the
20 citizenship question, correct?

21 A Correct.

22 Q Now, I want to --

1 A I want to be sort of -- yes. But as in
2 my role, what I did is I sort of was the convener,
3 and I got a group together to say, Census said
4 these are the three aspects we need to deal with.
5 So we know we've got legal people. We know we've
6 got Census people, and we know we've got policy
7 people so that we can go down this path. It
8 becomes very iterative and evolutionary at that
9 point. So we put a team together that could look
10 at these things.

11 Q And as the Under Secretary responsible
12 for the Census Bureau, and someone who had told
13 Congress that you wanted to make a complete and
14 accurate 2020 census a high priority, are you
15 saying that you did not feel it was your place to
16 make a recommendation or conclusion about whether
17 the citizenship question should be added?

18 A That decision was a decision that the
19 Secretary makes. It was absolutely my job to make
20 sure he got a full breadth of information and
21 opinions. There were certain decisions that the
22 director made. And so we'd have meetings, and I

1 would not give Ron Jarmin -- excuse me --
2 Dr. Jarmin my opinion on what he should do. It
3 was his decision to make. It was my position
4 to help and facilitate.

5 Q Right.

6 A So there was all kinds of decisions that
7 needed to be made by all kinds of people, and I
8 can promise you I didn't tell you -- the
9 technology people how to do their jobs either.

10 Q Okay. Let me go through some documents
11 that I think I saw you were involved in. I just
12 want to get your recollection of how that process
13 proceeded.

14 A Great.

15 Q We're marking as Exhibit 15 a one-page
16 email Bates number 9679.

17 (Plaintiffs' Exhibit 15, Email, was
18 marked.)

19 THE WITNESS: I'm sorry.

20 BY MR. GROSSI:

21 Q Now, this is an email chain, on the
22 bottom, Mr. Jarmin wrote to Karen, "Happy New

1 Year. I'd like to discuss the following with you
2 as soon you have a chance." And the third item
3 mentioned is strategy to the Department -- to the
4 DOJ letter on citizenship. And then that is
5 followed by an email from the name is blacked out,
6 however, the initials KDK are at the bottom of
7 that email, saying, "Perfect. Let's discuss
8 tomorrow." Which I guess would have been the 3rd
9 of 2018 -- 3rd of January 2018.

10 Despite the fact that someone has blacked
11 out the name, can you confirm that is your email?

12 A Again, can I confirm that I wrote this
13 email on January 2nd of 2018, that many months
14 ago? The answer is no, I can't confirm that.
15 Somebody could have written this. But would I
16 suspect and would I -- would I say yes, most
17 likely, that is mine, that --

18 Q Right.

19 A And I do sign things by KDK, which are my
20 initials. So I have no problem going forward.
21 But I cannot promise you absolutely, categorically
22 that I wrote this email.

1 That's what the memo says right here.

2 BY MR. GROSSI:

3 Q But you remember this information being
4 conveyed to you, correct?

5 A Sir, are what you asking me, do I
6 remember me getting a memo where these
7 alternatives were in here and these numbers were
8 herein?

9 Q That's one question, yes. Do you
10 remember that?

11 A Yes. I remember that.

12 Q And do you remember discussing it with
13 them?

14 A We discussed it on multiple -- multiple
15 occasions.

16 Q Okay. Let me ask this: In all the
17 time -- and now I'm taking it all the way through
18 the March 26th final decision -- did the Census
19 experts ever conclude that there would not be
20 additional costs to adding -- as a result of
21 adding the question on citizenship?

22 A The discussions we had went not only with

1 a complete, accurate and the cost, and yes, we did

2 say that there would be an additional cost.

3 Q And they always maintained that view, to

4 this day, as far as you?

5 A As far as I know.

6 Q Okay. That's what I'm looking for. I'm

7 looking for them ever coming to you and saying,

8 you know, Under Secretary, we were wrong?

9 A But they didn't know it. They didn't

10 know it. It was what they thought. They did not

11 know what would happen. We won't know the answer

12 to that until 2020.

13 Q And you knew that the Census people were
14 providing you with their best estimate, correct?

15 A They were certainly doing -- coming up
16 with their conclusion.

17 Q We don't know how bad it might be; is
18 that right?

19 A We -- we cannot -- you and I cannot
20 speculate on the future.

21 Q But the Census experts can give you and
22 Secretary Ross their best estimates?

1 A I'm sorry?

2 Q You have to -- you have to say yes for
3 the record.

4 MR. GARDNER: She's asking you to repeat
5 the question.

6 THE WITNESS: Sorry. Could you repeat
7 the question? I'm sorry.

8 BY MR. GROSSI:

9 Q Oh. I'm sorry.

10 Dr. Jarmin asked these various people to
11 be involved, to prepare a memorandum for him on
12 this issue?

13 A That is my assumption.

14 Q And Dr. Jarmin understood that he should
15 enlist the best people at the Census Bureau?

16 MR. GARDNER: Objection. Calls for
17 speculation.

18 THE WITNESS: I can't --

19 MR. GARDNER: No foundation.

20 THE WITNESS: I can't tell you what
21 Dr. Jarmin was thinking.

22 BY MR. GROSSI:

1 Q Did you ever say to Dr. Jarmin, why
2 didn't you include, Mr. X, Ms. X?

3 MR. GARDNER: Objection. Form.

4 THE WITNESS: Dr. Jarmin is an -- is the
5 direct- -- is the acting director of the Census.
6 I did not question him. I asked him if he would
7 put together the team he wanted to put together.

8 BY MR. GROSSI:

9 Q Okay. Let me ask you this: Are you
10 satisfied that he did a good job selecting the
11 right people and coming up with a competent
12 assessment, or not?

13 A The Census did the very best job they
14 could on this.

15 Q Now, it goes on on the next page, 5474,
16 again, to say with respect to Alternative B,
17 quote, it would lower -- I'm sorry -- it would
18 result in lower quality enumeration date, unquote.

19 Do you remember that being the view of
20 the Census experts as of early January 2018?

21 A At this point in the decision, that was
22 their assessment.

1 Q Did they ever change that assessment,
2 which is specifically that adding the citizenship
3 question would result in lower quality enumeration
4 data?

5 A I do not believe so.

6 Q And then it goes on to say, that they
7 also estimate that asking the citizenship
8 question, quote, would result in 154,000
9 fewer -- and they emphasize that
10 word -- enumerations. This is also a lower bound
11 estimate on the loss of accuracy, unquote.

12 Let's take them in pieces. Did -- have
13 the Census Bureau experts ever changed their
14 opinion that asking the citizenship question would
15 result in 154,000 fewer correct enumerations?

16 MR. GARDNER: Objection. Lack of
17 foundation.

18 THE WITNESS: Conceptually, I -- they
19 have not, but this has evolved, and the numbers
20 have evolved. And I don't want to get caught
21 saying absolutely that number did not change over
22 three months and a whole lot of work, so please

1 don't put me in that box.

2 BY MR. GROSSI:

3 Q Okay. We'll look at this. I don't mean
4 to do that. We'll look at the subsequent ones.

5 Do you also remember that when they made
6 these estimates, they were emphasizing that this
7 was the lower bound, which is to say it could have
8 been worse?

9 A It says it right there. This is the
10 lower bound estimate.

11 Q And they've never changed their view
12 about that, have they?

13 MR. GARDNER: Objection. Lack of
14 foundation.

15 BY MR. GROSSI:

16 Q To your knowledge, as the person who
17 supervised their work, they never changed that to
18 you, correct?

19 A Not to my knowledge.

20 Q Okay. Now, let's go to the last page,
21 two points here. At the very beginning, it says,
22 "Alternative C delivers higher quality data for

1 Alternative B for DOJ's stated uses," unquote.

2 Now, let's just change the nomenclature.

3 Alternative C was a program of using

4 administrative data and not asking the citizenship

5 question, correct?

6 A Correct.

7 Q Alternative B --

8 THE WITNESS: Correct. I said correct,

9 everybody.

10 BY MR. GROSSI:

11 Q Alternative B was asking the citizenship
12 question, correct?

13 A Correct.

14 Q So it was the view of the Census experts
15 that as between the two, using this administrative
16 data without a citizenship question or asking the
17 citizenship question, it would be preferable in
18 terms of getting quality data for DOJ's stated
19 uses to go with the administrative data, correct?

20 MR. GARDNER: Objection.

21 Mischaracterizes the document.

22 BY MR. GROSSI:

1 Q That's how you understood it, right?

2 A Please repeat your question, sir.

3 Q Yeah.

4 A You -- you -- you --

5 Q Fair enough.

6 A You're jumbling it. And I will accept
7 this document as it is written here.

8 Q Okay. I just want to be clear, because
9 we're getting Alternative C and B here.

10 What they were telling you --

11 A And A.

12 Q And A, too.

13 But what they were telling you here was
14 that as between --

15 A At this junction in time --

16 Q Right.

17 A -- when they wrote this memo --

18 Q They thought it would be better to use
19 administrative data and not ask the citizenship
20 question from the standpoint of the
21 Department of Justice quality data, correct?

22 A It says right here, "Alternative C even

1 better meets DOJ's stated use."

2 Q Than Alternative B, right?

3 And they've never changed their view on
4 that either, have they?

5 MR. GARDNER: Objection. Lack of
6 foundation.

7 THE WITNESS: Not to my knowledge.

8 BY MR. GROSSI:

9 Q Okay. And then it comes down to the
10 recommendation, and they say Alternative A isn't
11 costly and doesn't harm the count, but then
12 referring specifically to the idea of adding or
13 not, it says, "Alternative B better addresses the
14 DOJ's stated uses. However, it is very costly and
15 does harm the quality of the census count by
16 increasing erroneous enumerations," and then as
17 you just said a moment ago, they also said,
18 "Alternative C even better meets DOJ's stated
19 uses."

20 Let me take each little piece, all right.
21 As the Census -- have the Census experts ever
22 changed their view that Alternative B is very

1 costly?

2 MR. GARDNER: Objection. Lack of
3 foundation.

4 THE WITNESS: Not to my knowledge.

5 BY MR. GROSSI:

6 Q Have they ever changed their view that
7 Alternative B, adding the question, harms the
8 quality of the census count by increasing
9 erroneous enumerations?

10 MR. GARDNER: Same objection.

11 THE WITNESS: Not to my knowledge.

12 BY MR. GROSSI:

13 Q Have they ever changed their view that
14 Alternative C, using administrative data without a
15 question, even better meets DOJ's stated uses?

16 MR. GARDNER: Same objection.

17 THE WITNESS: Not to my knowledge.

18 BY MR. GROSSI:

19 Q Have they ever changed their view that
20 Alternative C, administrative data, is
21 comparatively far less costly than Alternative B?

22 MR. GARDNER: Same objection.

1 THE WITNESS: Not to my knowledge.

2 BY MR. GROSSI:

3 Q And then they say, "For these reasons, we
4 recommend Alternative C, using administrative
5 records without the citizenship question for
6 meeting the Department of Justice's data request."

7 Have they ever changed their final
8 recommendation to use administrative data without
9 a citizenship question additional rather than
10 adding such a question? Have they ever changed
11 their recommendation in that respect?

12 MR. GARDNER: No objection.

13 THE WITNESS: Not to my knowledge.

14 BY MR. GROSSI:

15 Q Okay.

16 MR. GARDNER: Tell you what, we've been
17 going a long time. Why don't we go off the record
18 and grab lunch?

19 MR. GROSSI: I think this is a good time.
20 I agree.

21 VIDEOGRAPHER: This concludes Media Unit
22 Number 3. Time on the video is 12:34 p.m. We are

1 not give an opinion on C or A or B. I did not do
2 that. It is a misrepresentation of what I said.
3 It could be a confusion or it's a game of
4 telephone tag, because it went from me to somebody
5 else. I can't speak to it.

6 Q Okay. Is that because you never took any
7 position on how the citizenship issue should be
8 handled?

9 A I never took a position on how the
10 citizenship issue should be handled.

11 Q So if Dr. Jarmin testified, as he did,
12 that you never disagreed with the recommendations
13 of the experts at the Census Bureau to use
14 administrative records rather than a citizenship
15 question, you're not contradicting that testimony
16 in any way?

17 A I didn't take a stance. So I didn't
18 agree or disagree.

19 Q Okay. Fair enough.

20 Now I'd like to talk about a little bit
21 of a different topic. Let's mark -- I'm marking
22 as Exhibit 18 some emails where the Bates number

1 begins 5489 and runs to 5491. The top email being
2 an email from Dr. Jarmin 1/3/2018 at 6:55 p.m.
3 (Plaintiffs' Exhibit 18, Email, was
4 marked.)

5 BY MR. GROSSI:

6 Q Okay. Now, Secretary Kelley, I think you
7 testified in words or substance before the break
8 that you viewed your job primarily as facilitating
9 and making sure that the best possible people at
10 Census focus on this particular issue of adding
11 the citizenship question; is that right?

12 A I -- I said that I felt it was my job to
13 convene and organize and work with Census to put a
14 strategy in place for the overall timeline, as
15 well as provide the Secretary with the best
16 information for him to make a decision.

17 Q Okay. And this was specifically in the
18 context of a request that was received in December
19 from the Department of Justice about their needs
20 for certain data, correct?

21 A Correct.

22 Q Okay. Did you also feel that as part of

1 your job, it was important to make sure that your
2 folks in the Census Department were talking
3 productively with the appropriate people in the
4 Department of Justice about what they needed and
5 how they could best -- how Census could best serve
6 their needs?

7 A Quite frankly, the suggestion of a
8 meeting between Census and DOJ came from Census.
9 In one of our conversations, as we were going
10 through strategies and timelines, we talked about
11 what would you normally do when this comes up, how
12 would you normally handle it? And they said they
13 would try to set up a meeting with the agency or
14 department or whatever it may be that wanted the
15 information and see -- you know, fine tune and
16 discuss and those kinds of things, and I said
17 super.

18 Q Good. I mean, and someone is asking
19 you --

20 A I don't know if I actually said super. I
21 want to be really clear.

22 Q That's okay.

1 happening. I'm talking to the Census. We're
2 saying what do we do, what's the strategy? They
3 say we're going to call -- and I support that
4 decision, if that's what they want to do and have
5 that meeting.

6 BY MR. GROSSI:

7 Q Okay.

8 A But I'm not hoping and -- you know --

9 Q Poor choice of words. I'm sorry.

10 Let's go over the particulars here.

11 Let's go to the last page -- actually, take a look
12 at the bottom of 5490.)

13 A Got it.)

14 Q And it indicates that Director Jarmin, on
15 Friday the 22nd of December, is sending an email
16 to Arthur Gary, who is later identified as someone
17 at the Department of Justice, and the subject is
18 the request to reinstate the citizenship question
19 on the 2020 census. Dr. Jarmin writes -- first,
20 he thanks him for the letter of December 12th
21 about the request by the Department of Justice,
22 and then says the Bureau is fully supportive of

1 working with Justice.

2 And then says, quote, to that end, I
3 directed staff to review all possible ways to
4 address the needs expressed in the letter. They
5 have now briefed me, and their findings suggest
6 that the best way to provide P.L. 94 block-level
7 data, with Citizen Voting Population By Race and
8 Ethnicity would be through utilization of a linked
9 file of administrative and survey data the
10 Census Bureau already possessed. This would
11 result in higher quality data produced at lower
12 costs.

13 Do you see that?

14 A I see.

15 Q And that's what we had referred to in the
16 Abowd memo that refers to as Alternative C,
17 correct?

18 MR. GARDNER: Objection. Lack of
19 foundation.

20 THE WITNESS: It would appear that way.

21 BY MR. GROSSI:

22 Q Okay. And then to follow the train,

1 working backwards, very quickly, on the afternoon
2 of December 22nd, Mr. Gary, who's identified as
3 the general counsel of the justice management
4 division of the Department of Justice, writes back
5 to Dr. Jarmin saying, "Thank you. We look forward
6 to meeting you and your team in early January,"
7 since now we're pretty much into the Christmas
8 season.

9 And then there is that break, and on
10 January 2nd, Dr. Jarmin writes back to Mr. Gary
11 and asks him if late the following week would work
12 for a meeting. And then Mr. Gary quickly responds
13 back and says, "It should work fine. Let me get
14 back to you."

15 And then on the very top, on January 3rd,
16 Dr. Jarmin writes to Mr. Gary and says, quote, I'm
17 bringing technical, program and legal folks. It
18 would be good if some technical folks on the DOJ
19 side were there so we can ensure we understand and
20 can meet your requirements, unquote. And then he
21 suggests a couple different days.

22 Were you aware at about this time that

1 Dr. Jarmin was trying to set up a meeting with the
2 Department of Justice including their technical
3 and program people?

4 A As I indicated before, I knew he was
5 setting up a meeting. The full compliment of
6 staff he was bringing, I would not have
7 questioned, and I'm not sure I knew or did not
8 know, but --

9 Q Now, in fact, the meeting never took
10 place, right?

11 A No. The meeting did not take place.

12 Q Why?

13 MR. GARDNER: Objection. Calls for
14 speculation. Lack of foundation.

15 BY MR. GROSSI:

16 Q Well, you would know why, wouldn't you?
17 You were involved in hoping that -- or planning
18 that Dr. Jarmin would set it up, right?

19 MR. GARDNER: Objection. Form.
20 Objection. Mischaracterizes witness's prior
21 testimony.

22 THE WITNESS: Again, Dr. Jarmin told me

1 he was going to set up the meeting. I did not get
2 involved in helping him plan to do that. I
3 just -- he said he was going to set up the
4 meeting, I said good. I support that. That makes
5 sense. Great. So that is that issue.

6 Do I know that the meeting did not take
7 place? Yes, I do know the meeting did not take
8 place.

9 BY MR. GROSSI:

10 Q And do you know why? 802

11 A It was under -- my understanding that the
12 Justice came back and said we really don't need to
13 meet. We do not need to meet. Our request is
14 what we've got in the letter, is the written
15 request.

16 Q Basically, they didn't even want to
17 discuss the use of administrative data?

18 A That's exactly right. And we had seen
19 that before in a couple other examples. Where we
20 wanted to meet with OMB on a topic, and they said,
21 no, what we've given you is what we've got, so we
22 don't need to meet. I've seen that happen before.

1 that I would -- I can't personally say I remember
2 this agenda on January 11th. I don't really even
3 know if I remember January 11th, but this would be
4 a typical agenda of the topics that now are
5 topical that we need to discuss.

6 Q I take it you don't remember anybody
7 saying that the citizenship question should be
8 added at this meeting?

9 A I do not remember that, but I do not
10 remember.

11 Q Okay. Let's go on, now, to the next one.
12 (Plaintiffs' Exhibit 21, January 9, 2018
13 memorandum, was marked.)

14 BY MR. GROSSI:

15 Q All right. I'm marking as Exhibit 21 a
16 memorandum and the Bates number is 1277 to 1285,
17 and it indicates it's dated January 9, 2018. It
18 states to be a memorandum for Secretary Ross that
19 has been transmitted from Dr. Abowd through
20 Enrique Lamas, the acting deputy director, and
21 then Dr. Jarmin, the acting director -- or the
22 director, and then you, now performing the duties

1 of deputy secretary.

2 Before we start, let me just ask you:
3 You assumed acting deputy secretary role in
4 November of 2017?

5 A Yes. I just want to clarify one thing,
6 and for those that do know this or don't know
7 this, there is in government -- and I'm new to
8 government -- a distinct difference between the
9 acting and the person who is performing the
10 nonexclusive functions and duties. I just want to
11 be very clear that in any colloquialism, if
12 somebody calls me the acting, I am not the acting
13 deputy secretary. I am performing the
14 nonexclusive functions and duties of the deputy
15 secretary.

16 Q And so for a single salary, you're doing
17 two jobs. You are performing the nonexclusive
18 duties of secretary and you're also the
19 Under Secretary; is that right?

20 A Yes, I am.

21 Q Well, I think that you should get a
22 raise.

1 A I am not an expert and technical genius
2 on this -- what is the actual technical, but this
3 goes through our exec seg process and all the
4 people that should know and this is the process.

5 Q As a practical matter?

6 A As a practical matter, yes.

7 Q Fair enough.

8 A Yes.

9 Q And you sent this to Secretary Ross?

10 A Yes.

11 Q Now, I want to discuss this document in
12 some detail, and you can read the whole thing or
13 I'm going to direct your attention to specific
14 questions, and I think they'll be in fair context.

15 A Okay. May I just say that this memo was
16 from Dr. Abowd and it came through myself,
17 Dr. Jarmin and Dr. Lamas. So you said you sent
18 this. This actually was sent through the three of
19 us, okay.

20 Q And all of you concurred it ought to go
21 up to Secretary Ross?

22 A Indeed.

1 Q Just to get the nomenclature correct
2 again, on the first page, the memo states, as
3 we've previously discussed, that the Census
4 experts had discussed three alternatives --

5 A Excuse me, sir. If you would not mind,
6 we've said prior to this that there have been many
7 iterations, many versions, many everything. If
8 you wouldn't mind, I would like to take a minute
9 to look at this, as we are going to go through
10 this document.

11 Q Sure.

12 A Thank you.

13 Q Ready to go. Okay. Secretary Kelley, in
14 this memo that we've marked as Exhibit 19 --

15 A 21.

16 MR. GARDNER: 21.

17 BY MR. GROSSI:

18 Q Oh, I'm sorry. 21. Thank you.

19 The first page is sort of a summary of
20 the recommendations, and I want to ask you about a
21 couple of them. The Census experts begin by
22 saying that the Department of Justice has

1 requested block-level citizen voting age
2 population estimates.

3 Do you see that?

4 A Yes.

5 Q That's what we've been referring to as
6 the DOJ request, correct?

7 A Correct.

8 Q And then they say, as they did in the
9 earlier versions, the prior memos, that they
10 considered three alternatives, A, no change in
11 data collection. That is no additional
12 citizenship question, correct?

13 A Correct.

14 Q And B would be adding the question to the
15 2020 census, correct?

16 A Correct.

17 Q And C would be obtaining the citizenship
18 data and status from administrative records for
19 all of the census --

20 A Right.

21 Q -- population?

22 And then the Census experts in the memo

1 that you forwarded to Secretary Ross states,
2 quote, we recommend either Alternative A or
3 Alternative C, correct?

4 A Says right there in the memo.

5 Q So they were not recommending adding a
6 question?

7 A They were recommending A or C.

8 Q Correct. Neither of which added the
9 citizenship question, correct?

10 A Correct.

11 Q And they then go on to explain that in
12 their view, quote, Alternative C best meets DOJ's
13 stated uses, is comparatively far less costly than
14 Alternative B, does not increase response burden,
15 and does not harm the quality of the census count.

16 Do you see that?

17 A Yes, I do.

18 Q At no time have the experts in the Census
19 recanted or changed their view on any of those
20 four propositions with respect to Alternative C,
21 correct?

22 MR. GARDNER: Objection. Lack of

1 foundation. Calls for speculation.

2 THE WITNESS: I can't speak to what all
3 the people of the Census who participated in
4 putting this memo together, I can't speak to that.
5 I can agree with what you're saying on the page.

6 BY MR. GROSSI:

7 Q What I'm asking you is: You're not aware
8 of anybody -- anybody at the Census Bureau coming
9 to you or writing you and saying I disagree with
10 any of those four facts, correct?

11 A Correct. And your four facts are --

12 Q We can take them one at a time. C best
13 meets the DOJ's stated uses: That was their
14 position then and it's their position now,
15 correct?

16 MR. GARDNER: Objection. Calls for
17 speculation. Lack of foundation.

18 BY MR. GROSSI:

19 Q I mean, in terms of lack of foundation,
20 these people do work under your supervision,
21 correct?

22 A That is what they wrote in the letter. I

1 don't know every single person at the Census -- I
2 don't want to get caught up in that situation.

3 Q But they --

4 A But they have written that here in this
5 memo, and I agree that that's what they wrote
6 here.

7 Q And you also agree that from your own
8 knowledge of dealing with these people on this
9 issue and otherwise, you've never heard anybody
10 from Census saying that it was wrong that
11 Alternative C best meets DOJ's stated uses?

12 A Not to my knowledge.

13 Q And the same with no one ever said to you
14 that it was wrong that Alternative C is
15 comparatively far less costly than Alternative B?

16 A Not to my knowledge.

17 Q And Alternative C does increase the
18 response burden: They never changed their mind
19 about that as far as you know, correct?

20 A Not to my knowledge.

21 Q And Alternative C does not harm the
22 quality of the census count: You have no reason

1 to think that's not their view today, correct?

2 MR. GARDNER: Objection. Calls for
3 speculation. Lack of foundation.

4 THE WITNESS: Not to my -- not to my
5 knowledge.

6 BY MR. GROSSI:

7 Q Now, let's talk about Alternative B,
8 which is adding the question. And the Census
9 experts said that, in their view, Alternative B is
10 very costly.

11 Are you aware of anybody at the
12 Census Bureau who has said that that is not true
13 in their view?

14 A It is costly if they are -- their
15 conclusions are correct.

16 Q Okay.

17 A It is more costly if their conclusions
18 are correct.

19 Q And they've never suggested, as best they
20 understand it and believe, that their conclusions
21 in this memo are incorrect, they've never said
22 that?

1 A Not to my knowledge.

2 Q They've also said that adding the
3 question would harm the quality of the census
4 count, correct --

5 A That is what they said.

6 Q -- they said that?

7 And you're not aware of any place where
8 they've changed their minds since this memo was
9 written?

10 A Not to my knowledge.

11 Q And then they finish off Alternative B by
12 saying that it would use substantially less
13 accurate citizenship status data that are
14 available from the administrative sources.

15 Do you see that?

16 A I do.

17 Q And you understood that was their view.

18 And as far as you know, that's still
19 their view today?

20 A Not to my knowledge. It did not change.

21 Q Now, I'm going to go into the specifics
22 on the next page a little bit more, but let me

1 are off the record.

2 (Off the record.)

3 VIDEOGRAPHER: This begins Media Unit
4 Number 5. The time on the video is 2:35 p.m. We
5 are on the record.

6 (Plaintiffs' Exhibit 22, Email, was
7 marked.)

8 BY MR. GROSSI:

9 Q Secretary Kelley, I'm going to give you a
10 document -- and I'm going to tell you right now,
11 I'm going to ask you about the front page and not
12 the attachment. I'm going to show you a later
13 version of the questions, and we'll get into it
14 then. If you want to just look at the first page,
15 I just want to get context of when you began to be
16 aware, again, of these questions that were being
17 floated. And I'll just read in for the record,
18 and tell you why I'm interested, the top page,
19 2292, on Exhibit 22 is an email to Mr. Comstock
20 from Burt Reist, and it talks about the
21 citizenship questions complete set as of that
22 date, February 2nd, and then there is a set of the

1 questions and answers.

2 A We're not looking at those?

3 Q Right. And all I'm asking you is: Was
4 it about the first week in February when you
5 returned that you learned that these questions and
6 answers were being circulated and being addressed
7 by the Census experts?

8 A To back up, the day that we had the
9 meeting, there were questions being thrown out by
10 a lot of people. Again, I want you to understand.
11 This process was iterative. It was collaborative.
12 We were sitting around, people were asking
13 questions. I was jotting down questions. Other
14 people were jotting down questions. We were sort
15 of compiling questions. Then people had the
16 ability to come back later on and say, I just
17 thought of this. There's another question. So we
18 were sort of keeping a pile of the questions.

19 I was the keeper of the questions. They
20 weren't all my questions, but they would refer to
21 them as Karen's questions or Karen's list or
22 Karen's whatever, just because I had them. When I

1 did leave, I handed that document, that list of
2 questions to somebody else so that they would have
3 it so the work could continue, they knew where it
4 was. And so when I returned, I knew the questions
5 were in process -- or some had been answered, some
6 had been processing, and I just needed to get
7 caught up on where they stood.

8 Q Good. Thank you.

9 Let me ask you a little bit more about
10 this meeting. Whenever the date actually was, who
11 was present, the best you can remember?

12 A There were -- certainly, Enrique Lamas,
13 Dr. Abowd, Dr. Jarmin -- I should say Dr. Lamas.
14 We had people from legal -- legal there. We had
15 people from policy there. Earl was there.
16 Comstock was there. I believe both James and
17 Peter were there, but I -- I don't know exactly.

18 Q Peter Davidson?

19 A Yeah. But, again, I'm not exactly
20 100 percent sure. But it was a compliment of the
21 entire group of the three groups that I talked
22 about being involved.

1 Q It was all Commerce and/or Census people,
2 correct?

3 A Oh, yes. As opposed to who?

4 Q As opposed to the Department of Justice?

5 A Oh. No. No. No. It was just Commerce
6 people, yes.

7 Q And Secretary Ross was not there?

8 A No. He was there.

9 Q Oh. He was there?

10 A He was there. Absolutely.

11 Q And he had, by this time, received and
12 digested the memo --

13 A The memo, not the -- the question --

14 Q -- we talked about earlier, the January
15 19th memo?

16 A Yes.

17 Q Did he express his view that he thought
18 the citizenship question should be added?

19 A No. He asked questions. It was really a
20 very open dialog with a lot of questions going
21 back and forth and clarification and can we find
22 this out, which led to many of the questions.

1 Q Did Secretary Ross know at that time that
2 Justice had declined to meet about this --

3 MR. GARDNER: Objection. Calls for
4 speculation.

5 BY MR. GROSSI:

6 Q -- something had happened a couple weeks
7 earlier?

8 MR. GARDNER: Objection. Calls for
9 speculation. Lack of foundation.

10 THE WITNESS: I don't know the answer to
11 that.

12 BY MR. GROSSI:

13 Q Did Secretary Ross express to you that it
14 would be important for the Justice people to meet
15 with the Census people so that they could
16 understand the technical aspects of why Census was
17 saying that administrative records would be better
18 than adding a citizenship question?

19 A I -- I don't recall the dialog around
20 that.

21 Q You don't recall anybody expressing the
22 view that they should meet with Justice to explain

1 to them why the Census solution was better than
2 adding a question? You don't remember that coming
3 up?

4 A No. In regard to my conversation with
5 Ron and the notes that you told me that I knew the
6 meeting wasn't happening, I mean, I knew all that.
7 You were speaking specifically in reference to the
8 Secretary, and I don't recall the conversations
9 around that with the Secretary.

10 Q All right. Okay. I want to switch
11 topics slightly, and we're going to come back to
12 the questions in chronological order.

13 A And are these the questions we're using,
14 or are you giving me --

15 Q I'll give you a later version.

16 A Because, like the letter, there were lots
17 of versions of the questions.

18 Q Right. As you look at that, as best you
19 can, do you think that it refreshes your
20 recollection that by about February 2nd you were
21 back focusing in on this issue?

22 A That would have been the Friday after

1 I -- if I were back that day -- and I believe I
2 was -- I was just sort of cleaning up and prepping
3 up.

4 Q That was the transitional time. Okay.
5 Fair enough.

6 A And, in fact, I'm not even on this email
7 that went to Earl.

8 Q Right. I noted that. I just wanted to
9 see if, perhaps, they gave you a copy as soon as
10 you got back.

11 Do you remember a meeting with the
12 Secretary -- a further meeting with the Secretary
13 around February 12th?

14 A Again, I don't remember the dates, but
15 there was a second -- secondary meeting that --

16 Q Who was present at that meeting?

17 A So I want to be very clear that at the
18 time that this was going on, this became an
19 iterative process. It was evolutionary. People
20 were working collaboratively together. It wasn't
21 a work, stop, hand all the documents. It was
22 answering questions. It was dialog. And so there

1 were other questions -- there were other meetings.
2 If there was an oversight meeting or steering
3 committee meeting, a group may have joined at the
4 end of it to discuss this. So there were lots of
5 dialog and conversation going on.

6 Q And Secretary Ross attended that meeting?

7 A Not all, but many of them.

8 Q He attended that meeting -- if it might
9 be the first week or second week in February.

10 A I believe that sounds reasonable.

11 Q And it was, otherwise, all Commerce and
12 Census people, correct?

13 A Yes.

14 Q No Justice people?

15 A No Justice people.

16 Q And is it essentially the same group you
17 think you had before, Mr. Comstock?

18 A We had, clearly, representation from
19 legal, policy, Census.

20 Q Okay.

21 A Because you wouldn't want to have the
22 meeting unless you had representation from all

1 three of these groups we were using as guiding
2 principle as we looked at this.

3 Q Now, Secretary Ross by this point had
4 heard from the Census experts that they
5 recommended against adding this -- the citizenship
6 question, correct?

7 A Right. He asked many questions of them,
8 and he said they are valid questions, and we will
9 get back to you. So it was a dialog going on.

10 Q And they had, in fact, prepared a set of
11 those questions to provide to him?

12 MR. GARDNER: Objection. Form.

13 BY MR. GROSSI:

14 Q That was -- part of the process on
15 February 12th was to receive, either in written
16 form or in oral form, the answers to his
17 questions?

18 A I don't want to get hung up on the date
19 of the meeting, but, yes, there was a later
20 meeting for him to get the answers to the
21 questions.

22 Q Actually, I think now that we know that

1 this may be a more important document, let's go
2 through it. I just want to point out the answers
3 to three questions, okay?

4 A In this document that we weren't going to
5 use?

6 Q Right. The one we have the attachment
7 on.

8 A Which we don't know if this was a draft
9 or final copy, do we?

10 Q It is not the final copy, but it is the
11 copy closest to the mid-February meeting. That's
12 why I'm going to ask you about it.

13 A I said I don't know if there was meet- --
14 when the date was of that mid-February meeting
15 was.

16 Q Okay.

17 A So I don't want to --

18 Q Well, we have had testimony that there
19 was a big meeting with Secretary Ross on
20 February 12th.

21 Does that refresh your recollection?

22 A I know there was a meeting around that

1 time, so I'm not disputing that. If my colleagues
2 said it was on February 12th, I wouldn't disagree
3 with them. I'm just saying I don't specifically
4 remember.

5 Q Okay. Just take a look --

6 MR. GARDNER: Exhibit 23.

7 BY MR. GROSSI:

8 Q So 22.

9 A I have one big packet of stuff here and
10 it --

11 Q Right. And it should have the questions
12 attached.

13 MR. GARDNER: No.

14 MS. KELLY: It's --

15 MR. GARDNER: You intended it to be a
16 single exhibit?

17 BY MR. GROSSI:

18 Q Okay. So we're -- and to be very
19 precise, in Exhibit 22 on Page 2294, it begins the
20 questions and answers to the questions that were
21 asked about the January 19th draft.

22 Do you see that?

1 A Yes.

2 Q Okay. I want to just ask you about
3 three, all right.

4 The first one is Question Number 10.
5 Someone was interested and asked the question,
6 "The NRFU numbers are comparatively small.
7 Approximately one additional house for NRFU [sic]
8 percent enumerator. Is this really a significant
9 source of concern?"

10 Let me just ask: Do you recall who posed
11 that question initially?

12 A No, I don't.

13 Q Okay. The answer of Census experts is,
14 quote, yes, this is a significant concern. First,
15 it gives rise to incremental NRFU costs of at
16 least 27.5 million. This is a lower bound because
17 it assumes the households do not self-respond
18 because we added a question on citizenship, have
19 the same follow-up costs as an average U.S.
20 household. They won't, because they -- these
21 households overwhelmingly contain at least one
22 noncitizen, and that is one of our acknowledged

1 hard-to-count subpopulations.

2 Do you remember that the Census Bureau
3 responded to the question by saying that it really
4 was a significant concern in their minds that
5 adding the citizenship question would increase the
6 nonresponse rate?

7 A So my vernacular here will be NRFU,
8 that's what they call it, N-R-F-U is called NRFU.
9 And there was a discussion about this, and there
10 was a discussion about the fact that one
11 percentage point out there is -- there's
12 \$15.6 billion lifecycle cost estimate to get this,
13 and -- to do this census and, quite frankly, as
14 we're going through this and there were many
15 new -- new ways the census was being taken by
16 Internet self-response and telephone and there
17 were other things, there was -- at least the 27.5
18 million, which is in this.

19 This -- because of the conversation
20 around the fact that it would be a noncitizen who
21 would not answer this, in their opinion, this is
22 their conclusion of the data, they looked at it.

1 It would be those households, you know, at least
2 one noncitizen are the hard-to-count population,
3 and that is absolutely right. We consider that
4 the hard-to-count population, and we spend a
5 tremendous amount of time on how to count the
6 hard-to-count population.

7 The Census Bureau, if you ever have been
8 with the Census, you can do all the technology you
9 want in the background and we can provide
10 everything. It's the people -- feet on the
11 ground, those people that are out there
12 enumerating, doing the job, which the Secretary
13 did when he was himself in college. So he is very
14 familiar with that exercise -- they do this and
15 they did -- they did state this concern.

16 We also talked about mitigation to this
17 concern, and we talked about the fact that we
18 were, in this census, increasing the number of
19 partnership programs that we were having. We were
20 rethinking the way things were being done, so we
21 were already talking about if -- not on this
22 date -- but what our mitigation strategies were if

1 this were to be the case.

2 Q But Census never changed its view and
3 never changed their answer to this question,
4 correct?

5 A No, they did not, as far as I know.

6 Q Let me ask you about another one
7 that's --

8 (Conference call interrupted.)

9 BY MR. GROSSI:

10 Q Okay. Let me state it again.

11 Directing your attention to Page 2299,
12 the Question 13 and answer -- excuse me -- the
13 question is, quote, if Census is confident that
14 administrative data will be available to be used
15 to determine citizenship for all persons, e.g.,
16 not all citizens have Social Security numbers,
17 unquote.

18 I think you alluded to this a moment ago
19 when you talked about having MOUs in place to have
20 the right administrative data. Do you remember
21 that?

22 A Yes, I did.

1 Q But the answer of the Census experts was,
2 quote, we are confident that Alternative C is
3 viable, and that we already have invested enough
4 high quality citizen administrative data from SSA
5 and IRS, unquote, and then it goes on to elaborate
6 a little bit.

7 I'll represent to you that this answer
8 was never changed in any subsequent draft of these
9 Q&As. Is that also your recollection, that the
10 Census experts believed they had the data in place
11 to make administrative data use viable?

12 A They answered the Question Number 13, to
13 say yes. But also in the original document, which
14 has the three alternatives, they do say that they
15 would want to put a memorandum of understanding in
16 place so they would have higher quality data in
17 order to do that. But it is not my understanding
18 that they have changed that answer to that
19 question.

20 Q So they thought it was viable six months
21 ago and they think it's viable now, right,
22 Alternative C?

1 A They've not -- to my knowledge, they have
2 not changed that.

3 Q All right. Let's leave that, and I just
4 want to ask about a couple more things.

5 A Are we leaving this?

6 Q Yes. We may be returning to it, but for
7 right now, we're leaving it.

8 I'm marking as Exhibit 23 an email that
9 begins on Bates number 4853.

10 (Plaintiffs' Exhibit 23, Email, was
11 marked.)

12 BY MR. GROSSI:

13 Q Now, this is an email chain on
14 February 13th, which if Dr. Jarmin's recollection
15 is correct, was the day after the meeting with
16 Secretary Ross. And if you go to the first item,
17 which is the last on the chain, we find Mr. Jarmin
18 writing to a Michael Strain, and he says, "We are
19 trying to set up some meetings for Secretary Ross
20 to discuss the proposed citizenship question on
21 the 2020 census with interested stakeholders.
22 Most stakeholders will speak against the proposal.

1 We're looking to find someone thoughtful who can
2 speak to the pros of adding such a question or
3 perhaps addressing the fundamental need, some
4 other" -- I'm sorry -- "the fundamental data need
5 some other way (e.g., admin records.) Do you know
6 of anyone at AIE or elsewhere that could do this
7 sometime over the next couple weeks?"

8 And Michael responds by saying, "None of
9 my colleagues at AIE would speak favorably about
10 the proposal. It is -- is it important that the
11 person actually be in favor of how -- the
12 proposal?"

13 You were involved in efforts to discuss
14 the possibility of adding a citizenship question
15 with what has been referred to as stakeholders?

16 A Uh-huh.

17 Q Correct?

18 A Yes. I'm sorry.

19 THE WITNESS: Yes, Karen.

20 BY MR. GROSSI:

21 Q You attended some meetings with some of
22 those people?

1 A I attended some meetings. Did not attend
2 all the meetings.

3 Q Did you also, on one occasion, listen in
4 by telephone, because maybe you were in a
5 different location?

6 A Yes. Yes.

7 Q AIE is the American Enterprise Institute
8 in this context, correct?

9 MR. GARDNER: Objection. Lack of
10 foundation. Calls for speculation.

11 THE WITNESS: I honestly am not 100
12 percent sure, but I believe so. I do not know
13 Michael Strain, at all. So I have no basis --

14 BY MR. GROSSI:

15 Q Dr. Jarmin was tasked with trying to find
16 someone who would speak in favor of adding the
17 citizenship question, correct?

18 A I'm going to say that is incorrect. What
19 we sat in the meeting and discussed with the
20 people from the Census, the entire group that were
21 there, we said that the Secretary wanted to get
22 opinions of stakeholders. We then wrote those

1 stakeholders, and it was a group effort and group
2 discussion to say we want pros, we want cons, we
3 want him to hear from federal, local businesses,
4 businesses, special interest groups, so on and so
5 forth, former directors, so that he could get an
6 academic, intellectual -- he could get a full look
7 at the -- at people who wanted to comment on it.
8 And we wanted to get -- a combination of views,
9 because we wanted it to be very objective.

10 Q And what Mr. Jarmin -- Dr. Jarmin
11 responded to Mr. Strain, as indicated on the first
12 page, 4853, is, "We are trying to find someone who
13 can give us a professional expression of support
14 for the proposal in contrast to the many folks we
15 can find to give professional statements against
16 the proposal," unquote.)

17 So bottom line was you had plenty of
18 people who were against adding the question, so
19 Dr. Jarmin was trying to balance that out with
20 someone who would speak in favor of the proposal;
21 isn't that right?

22 MR. GARDNER: Objection. Lack of

1 foundation. Calls for speculation.

2 THE WITNESS: Yeah. I wouldn't say that
3 as much as I would say that what we did is we
4 had -- we were trying to make the list, we were
5 trying to make it very fair, very balanced, and we
6 were looking at it. And I don't know where it was
7 in the process of discussing this. But, for
8 example, I don't know a lot of people in this
9 town. I wouldn't -- I wasn't involved in making
10 many calls, but one person I did know, a gentleman
11 named Arturo Vargas, who I had met with before,
12 who I knew was against this. I said, let's make
13 sure he's on the question -- on the list, because
14 he had been vocal, and he came to meet with me on
15 other topics well before the question. I said,
16 let's make sure we get his opinions on this. So
17 we were getting opinions. We were filling out the
18 list. So I can't tell you at this point how they
19 were filling out the list.

20 BY MR. GROSSI:

21 Q Okay. In any event, he told you at the
22 top in an email to you that, "It appears that no

1 one at AIE willing to speak in favor of putting
2 question on the 2020," unquote, correct?

3 A Yeah. That's exactly what it says. He
4 wrote to me.

5 Q And did Dr. Jarmin keep looking for
6 people who would speak in favor of putting the
7 question on the proposal?

8 A I believe as we sat in that meeting, we
9 had a list of groups and/or people that would make
10 sense to talk to. And so -- I don't know where he
11 was on the list. If he was at the beginning, the
12 end, where he was exhausted on the list, but there
13 would be other people on the list that he could
14 call and not call. And we actually felt very
15 important, that we had the Census input on who
16 they wanted us to speak to.

17 Q You figured the Census people would be
18 the best judges of who would be an effective
19 person, one way or the other?

20 A Well, they would certainly know experts
21 in the field.

22 Q Right.

1 A They would certainly know -- and we had
2 the business liaison talk to us about which
3 business people we should put on, and, you know,
4 that kind of thing.

5 Q Sure.

6 A But very much with a view we wanted the
7 Secretary to have not only geographic,
8 demographically, but across multiple -- multiple
9 groups.

10 Q One group that you were particularly
11 interested in were the prior Census directors,
12 correct?

13 A Yes, we did. We put that as one of our
14 categories.

15 Q And did Mr. Jarmin
16 provide -- Dr. Jarmin -- I'm sorry -- provide you
17 with the input of Census directors?

18 A No. The Secretary had calls with them.

19 Q The Secretary directly called up prior
20 Census directors?

21 A So let me be very clear on this. We put
22 together -- from the lists that we produced from

1 these meetings and the work people did, we
2 produced a list and then worked with his
3 scheduling to have meetings so he could hear what
4 these people said. I would say to you that the
5 Secretary has schedulers and other people that
6 probably made the phone calls for him. Very
7 specific to your question, did he make phone
8 calls, but he did have -- he participated in phone
9 calls.

10 Q And did you participate in any of those
11 calls by listening in?

12 A I participated in some, not all.

13 Q Let me mark two related documents as
14 Exhibit 24, 8554, an email from John Thompson to
15 Ron Jarmin dated January 29, 2018, and
16 sequentially, 8555, which is Exhibit 25, which is
17 a letter to Secretary Ross.

18 MR. DEWHIRST: Is this two exhibits or
19 one?

20 MR. GARDNER: Two exhibits.

21 MR. GROSSI: Two.

22 (Plaintiffs' Exhibit 24, Email, was

1 marked. Plaintiffs' Exhibit 25, Email, was
2 marked.)

3 BY MR. GROSSI:

4 Q Okay. Have you seen copies of this
5 document before?

6 A Yes.

7 Q Did you see it at about the time that, I
8 guess, Dr. Thompson sent it to Dr. Jarmin in
9 either late January or more likely, in your case,
10 early February 2018?

11 A I would -- I would have probably seen it,
12 yes. I would probably have seen it in February.

13 Q And, for the record, what Exhibit 25 is,
14 is a letter that was addressed to Secretary Ross
15 on January 26th by six different former
16 Census directors, correct?

17 A Yes.

18 Q And it's fair to sum this up by saying
19 that they were against adding the citizenship
20 question, correct?

21 A They suggest to not put the question on
22 the census because of the testing.

1 Q Uh-huh.

2 A They don't bring up, to my knowledge, or
3 to my quick review here, they don't bring up other
4 reasons for not putting it on, but that it has not
5 been well tested.

6 The question had been on the ACS
7 since -- for many years and had been many -- had
8 been tested over and over with that wording. So
9 there was a discussion about whether or not the
10 testing was tested.

11 Q You think maybe those former Census
12 directors didn't know about the question on the
13 ACS?

14 MR. GARDNER: Objection. Calls for
15 speculation.

16 THE WITNESS: I --
17 BY MR. GROSSI:

18 Q Because that is what was suggested?

19 MR. GARDNER: Objection. Argumentative.

20 THE WITNESS: I'm not commenting on that.
21 I'm just saying this was a letter that talked
22 about the testing. We then had a full discussion

1 with the Census Bureau on the testing of the
2 question on the ACS, and if they thought that that
3 was acceptable amount of testing and that the
4 testing was sufficient, and that that is what I am
5 suggesting. I am not suggesting and would not
6 suggest making any comments about what these
7 individuals were thinking.

8 BY MR. GROSSI:

9 Q So when they state on the first page,
10 quote, we strongly believe adding an untested
11 question on the citizenship status at this late
12 date in the decennial planning progress would put
13 the accuracy of the enumeration and success of the
14 census in all communities at grave risk. That is
15 what they told Secretary Ross, correct?

16 A That is what is written here.

17 Q And was there anyone among your Census
18 experts who said, you know, these guys are wrong
19 about that, I disagree with them?

20 A Our Census experts talked to us about the
21 testing that had taken place under the ACS and the
22 fact that that was adequate testing.

1 Q Did they say they disagreed with the
2 conclusions of the former Census directors?

3 A I do not believe we ever asked the
4 question in relation to. But when we read this
5 letter, said we need to discuss with Census
6 whether they think the testing is correct. But we
7 did not -- you're making it did we put this letter
8 down, and, therefore, they answered these
9 questions. Once this letter was read, we said
10 we've got to discuss testing with the
11 Census Bureau, who said that they believed
12 adequate testing had been done --

13 Q Okay.

14 A -- over the years of the ACS.

15 Q Now I'd like you to go back to those
16 questions and answers from the prior draft, and I
17 want you to turn in Exhibit 22 to Page 2303 and,
18 specifically, Question 31 in the answer.

19 A I'm on the wrong page. Excuse me.

20 Q You see that? And it has to do with this
21 issue of process. And it says, what was the
22 process that was used in the past to get questions

1 added to decennial census, or do we have something
2 similar where a precedent was established?

3 And then in a very long answer, it says
4 that the Census Bureau follows a well-established
5 process that involves extensive testing, review
6 and evaluation. And then specifically on the next
7 page, outlines six steps that are taken.

8 Do you remember that?

9 A I see this, yes.

10 Q Okay. In this case, had the federal
11 agencies evaluated their needs and proposed
12 additions through the OMB?

13 A So let me be really clear on this. When
14 we started down the process of putting this
15 question on, we said to Census, how do we go
16 about -- what is it that we need to come up
17 with -- what do we need to do in order to put this
18 question on? And the answer was, at the top of
19 the house, the guiding principles were we needed
20 to have a legal review, an operational/technical
21 review, and we needed to have a policy decision
22 made.

Pl. Objection:
Testimony is
misleading without
designation of the
question at
246:15-247:12.

1 We then said, have you had any other
2 likewise times where this has happened? And they
3 said, well, it's kind of complicated, because
4 before, for 2000 -- in 2000, we had the long form,
5 we had the short form, so we really didn't -- we
6 really didn't change much there. And then we went
7 to the ACS, and we think about how we put the
8 question on the ACS, and sort of talked about all
9 of these things down -- down the path, and I have
10 seen this written -- this same language -- this
11 same dialog written in about four, five, six
12 different ways. And so what I would always go
13 back to with Ron, Enrique and others was, what is
14 it that we need? We need a legal review. We need
15 a technical policy review -- excuse
16 me -- technical/operational view, scientific
17 review, and we need a -- a policy decision made.

18 So I will tell you the way this question
19 Number 31 is written here, there had been other
20 iterations of this same thing written by different
21 people, but there was no hard fast guideline in
22 terms of this is a statutory requirement or this

1 is a requirement that has been passed down.

2 Q This question was assigned to
3 Victoria Velkoff to answer initially?

4 A I don't know the answer --

5 MR. GARDNER: Objection. Foundation.

6 THE WITNESS: I don't know the answer to
7 that.

8 BY MR. GROSSI:

9 Q The answer that appears on 2302, 3 and 4
10 that we just referred to, that's the answer of the
11 Census Bureau; isn't it?

12 A Yes. I believe so.

13 Q Okay.

14 A But the Census Bureau has answered that
15 same question several different ways in other
16 discussions.

17 Q Okay. That's what I want to try to
18 understand. I'm going to mark as Exhibit 26 a
19 later version.

20 (Plaintiffs' Exhibit 26, Questions, was
21 marked.)

22 BY MR. GROSSI:

1 Q Now, on Page 1296 of Exhibit 26, there's
2 the same question about what process has been
3 used, but a very different answer, a much shorter
4 answer that doesn't mention all the steps that
5 have typically been taken. All I want to know is:
6 Who wrote that?

7 MR. GARDNER: Objection. Lack of
8 foundation. Calls for speculation.

9 THE WITNESS: I don't know who wrote
10 that.

11 BY MR. GROSSI:

12 Q Do you think it was anybody in the Census
13 or do you think it was someone else not in the
14 Census Bureau?

15 MR. GARDNER: Objection. Form.
16 Objection. Lack of foundation. Calls for
17 speculation.

18 THE WITNESS: Oh, no. I will tell you I
19 truly believe that any answers that were written
20 were viewed and looked at across the groups.

21 BY MR. GROSSI:

22 Q That wasn't my question, ma'am. My

1 question was: Do you know who wrote the
2 answer --

3 A And I told you I don't know. I don't
4 know. And then you ask me a subsequent
5 question --

6 Q And you're not prepared to say that you
7 swear that it was written by somebody in the
8 Census Bureau, correct? You don't know?

9 A I don't. I -- I would assume so, but I
10 can't assume --

11 Q I would not want you to assume here.

12 A But everybody proofed the questions.
13 Everybody had a look at the questions. So
14 everybody looked at these questions.

15 Q All right. I have just a couple more
16 exhibits. Okay. I'm marking as Exhibit 27 a
17 document that begins with Bates number 9812. It's
18 dated March 1, 2008 [sic]. It does have a list of
19 those questions, but I'm not going to ask you
20 anything about them. My questions are going to be
21 entirely about the first three pages of the
22 document.

1 (Plaintiffs' Exhibit 27, March 1, 2018)

2 memorandum, was marked.)

3 BY MR. GROSSI:

4 Q I'm sorry. Five pages before the
5 questions begin, up through 9816.

6 Okay. Okay. On this exhibit, is it the
7 same type of format at the beginning that shows
8 that the views of Dr. Abowd and then Director
9 Jarmin, Assistant Director Lamas, and then you,
10 you were sending this up to Secretary Ross,
11 correct?

12 MR. GARDNER: Objection.

13 Mischaracterizes the document.

14 BY MR. GROSSI:

15 Q Let me ask, you sent this document to
16 Secretary Ross, correct?

17 A It went from -- through Dr. Abowd,
18 Dr. Lamas, Dr. Jarmin to the Secretary.

19 Q And according to Dr. Jarmin, you had
20 reviewed this memorandum before it was sent to
21 Secretary Ross. Is that your recollection, also?

22 A Yes.

1 Q And what's going on here on March 1, 2018
2 is that by now, someone has come up with the idea
3 of an Alternative D, which would, in a sense,
4 combine the old Alternatives B and C, in that a
5 census -- the census would contain a citizenship
6 question, but in addition, they would use the
7 administrative data to link up to answer needs of
8 Department of Justice and other people, correct?

9 A Correct.

10 Q Who came up with that Alternative D
11 first?

12 A I honestly do not remember. I'll tell
13 you we were in a meeting. We were talking about
14 all the different facts. And, again, it was an
15 iterative, evolving process, as I said. The
16 questions were being reviewed. We were
17 talk- -- and -- and somebody said, why don't we
18 look at the combination of B and C and see what
19 that would do.

20 Because one of the things that we
21 determined as we looked at it, that there was no
22 baseline. So you really didn't have a baseline.

1 So if you did this, you would create that baseline
2 and then the administrative records,
3 which -- which we are going to be using much more
4 in the census than in other censuses prior, we
5 could then have a baseline in to which use -- use
6 that going forward.

7 Q D wasn't proposed by anybody at the
8 Census Bureau, correct? It was someone else,
9 right?

10 MR. GARDNER: Objection to form.

11 THE WITNESS: I -- yeah. You're asking
12 me who proposed the question. I don't remember
13 who was sitting around -- we were sitting around a
14 table, in a group. I remember discussing the
15 baseline, and the Census Bureau clearly agreed
16 that there was a lack of issue -- there was a lack
17 of a baseline, and that this would -- that that
18 was, as well as others, a -- a flaw, if you will,
19 in Option C. And I don't know who said it.

20 It was one of those things where -- and,
21 again, I don't want to sound simpleton, but, you
22 know, when a whole group of people are sitting in

1 a room and trying to work through a problem the
2 best they can, and these people are throwing out
3 suggestions, what about this, what about this,
4 what about this question and then it came up.

5 BY MR. GROSSI:

6 Q Then it was decided that the experts in
7 the Census Bureau would analyze that in detail,
8 correct?

9 A Absolutely. Yes.

10 Q And that's the product --

11 A The product that --

12 Q -- that's here?

13 A That product --

14 Q And what they concluded on Page 9816 --
15 and I'm not going to go through all the reasons
16 they set forth -- is they say in their last
17 paragraph, "In sum, Alternative D would result in
18 poor quality citizenship data than does
19 Alternative C" -- the old Alternative C. They
20 concluded that, correct?

21 A Yes. It says that right on Page 9816.

22 Q And they've never taken that back,

1 correct?

2 MR. GARDNER: Objection. No foundation.
3 Calls for speculation.

4 THE WITNESS: I -- not that I -- not that
5 I know of.

6 BY MR. GROSSI:

7 Q They further say that, "Alternative D
8 would have all the negative cost and quality
9 implications of Alternative B outlined in the
10 draft January 19th memo to the Department of
11 Commerce."

12 Correct?

13 A Correct.

14 Q So Alternative D was not going to solve
15 any of those problems in adding the census --
16 citizenship question, correct, according to the
17 experts at the Census?

18 A Certainly from Dr. Abowd's comments here.
19 But it -- it did not still -- and we discussed it
20 at length, addressed the baseline situation.

21 Q There were no subsequent memoranda like
22 this from the Census Bureau up the chain to

1 Secretary Ross concerning this issue of whether or
2 not to add a citizenship question, correct?

3 MR. GARDNER: Objection. Form.

4 THE WITNESS: Okay. And I want to be
5 very clear on this, and I want people to
6 understand what I'm saying.

7 When we discussed this memo -- and I
8 think many people, not all, would say this is
9 reasonably complicated -- we tried to look at what
10 was a schematic that we could make this easier to
11 understand, and, therefore, later, a schematic was
12 produced that was -- I don't want to say added to
13 this -- but complimented this. So I don't want to
14 say nothing -- you're saying to me, was anything
15 created from this document? I don't want to
16 play -- I don't want to get in a nomenclature
17 issue with you. I want to be very honest with
18 this group that, yes, there was a schematic that
19 was produced to help understand what this looked
20 like.

21 BY MR. GROSSI:

22 Q And I appreciate the answer.

1 The schematic addition or iteration did
2 not change the conclusion that we just talked
3 about of the Census Bureau, that Alternative D was
4 not preferable to C, and, in fact, had all of the
5 problems of B adding to the question, correct?

6 A In Dr. Abowd's memo, yes. That is
7 correct.

8 Q And there is no subsequent
9 Census-authored memorandum?

10 A Not that I am aware of.

11 Q On this issue?

12 A Not that I'm aware of.

13 Q And I'm going to ask in a moment, but I
14 want to clarify one thing.

15 (Plaintiffs' Exhibit 28, Final decision,
16 was marked.)

17 BY MR. GROSSI:

18 Q Exhibit 28 is what I believe you've
19 referred to as the final decision of
20 Secretary Ross. Can you confirm that that's what
21 you had in mind when we talked about it?

22 A Yes. Yes.

1 Now, I know that you testified earlier
2 that funding was one of your big priorities when
3 you first became Under Secretary; is that fair?

4 A Yes.

5 Q So is the census still in danger of being
6 underfunded?

7 A No.

8 Q Can you explain?

9 A Yes. I'd be happy to. And I don't have
10 all the numbers in front of me, so we will -- if
11 we will directionally correct.

12 When the GAO put out their report in May
13 and the Secretary articulated about that report,
14 he said he would look at the lifecycle cost
15 estimate and the budget for the census. And so
16 for those who would obviously assume -- that,
17 again, remember the Census has the economic,
18 demographic, so they have a baseline budget that
19 keeps going. But once the decennial gets into
20 play, the decennial budget goes up expeditiously,
21 expeditiously and then it comes back down, and so
22 you get the big hump.

1 So what our job was to do was really look
2 at what should the lifecycle cost be in terms of
3 the -- in terms of this -- there were already
4 projects and programs -- and, again, I was not
5 there at the time -- that were going over budget.
6 So you really needed to look at this and say, what
7 is the reality of doing the budget? So what we
8 did is we went through the entire budget. We got
9 certified independent cost estimators to come in
10 and work with us. So there was a co-project
11 between the Department of Commerce and
12 Census Bureau that would look at these two
13 budgets. And then when I got -- by the time I got
14 there, again, August -- not July -- August 21st,
15 the first meeting, big meeting with all the groups
16 to review this budget was taking place within two
17 days. So that is one of the first things we did.

18 Once we identified that budget and made
19 adjustments to that budget and everybody agreed to
20 the budget -- because we didn't want -- very
21 important part of -- if you will, not to deviate,
22 part of the governance I talked about before, that

1 steering committee, we didn't want the Census
2 running a budget and the Department of Commerce
3 running a budget, and then all of a sudden, a year
4 later, oh, my goodness gracious. We wanted them
5 on a periodic basis to get together, meet, make
6 sure we were all agreeing on the numbers. So that
7 was part of that steering committee's reason for
8 kind of putting those kind of governance
9 structures in place.

10 So what we did is we worked on
11 those -- we also invited -- and when I say "we," I
12 want it to be colloquial we. I was not there when
13 all this work was done. They also invited people
14 from OMB to participate in the project with the
15 independent cost estimators, because OMB has been
16 looking at the census for so long.

17 So at the end of this analysis, we
18 determined -- we being -- the large we being
19 inclusive of Census and the Department of
20 Commerce -- that there needed to be a new
21 lifecycle cost estimate. That we needed to go
22 back to Congress, which the Secretary had said he

1 would do. We were then prepped up, prepared, went
2 to some briefing meetings, so on and so forth, and
3 went to Congress at the end of October, beginning
4 of November, if my time frame is correct, and we
5 talked about the funding, the change of the
6 funding, the estimate, so on and so forth.

7 And, actually, the Congress has been
8 extremely, extremely responsive to our needs, and
9 we have the funding we want. And they actually --
10 if I may compliment them -- did something that we
11 very rarely see before, and they said that we
12 could actually -- because at the time, if you
13 remember, one of the other things in the GAO
14 report was how are the systems going, scalability,
15 all these kinds of issues. And they actually said
16 that even though this was earmarked -- this is an
17 example, '19 money, if you are ready to use it in
18 '18 and you document why and you bring it to OMB
19 and it is approved, we will let you use '19 money
20 in '18. So, actually, that has been a very, very,
21 very successful collaborative process.

22 I've answered enough of your questions.

1 Q You have. Let me just make sure I
2 understand a couple smaller pieces of it.

3 Around October or November, you folks at
4 Commerce finalized a lifecycle estimate; is that
5 right?

6 A Yes.

7 Q And you brought that to Congress?

8 A Yes.

9 Q And Congress approved the budget that you
10 were requesting?

11 A For '18 -- '19, now we're working on the
12 '20 budget right now. But we have no reason to
13 believe that they would not.

14 Q Has the funding request that you've made
15 changed since the citizenship question
16 determination in March of 2018?

17 A No. It has not.

18 Q Now, let's turn back to Exhibit 28, which
19 is that decision memo.

20 Do you know who primarily wrote this
21 document?

22 A No, I don't know who primarily wrote the

1 make sure the process was working. We wanted to
2 see what was the U.N. recommendations, what did
3 other developed countries do, those kind of
4 things. But I was not -- those assignments were
5 given to the most appropriate people to do.

6 Q Okay. So let's start from the second
7 paragraph and Secretary Ross writes -- or let's
8 say that he writes, because this is his memo, he
9 signed it. "I had set out to take a hard look at
10 the request and ensure that I considered all the
11 facts and data relevant to the question so I could
12 make an informed decision on how to respond."

13 Now, it's my understanding that you
14 testified that Secretary Ross saw those memos that
15 Census prepared, correct?

16 A Correct.

17 Q And you testified that he spoke to a
18 number of stakeholders about this?

19 A Correct.

20 Q Are you aware of any other information or
21 facts or data relevant to this question that
22 Secretary Ross reviewed, other than those sources?

1 A Well, as I said, there were legal

2 documentation produced, right.

3 Q Okay.

4 A There was information about what do other

5 developed countries do. There was information on

6 what the UN sources do.

7 Q Uh-huh. Anything else that you can think

8 of?

9 A Not off the top of my head.

10 Q Anything you can think of that would

11 refresh your recollection?

12 A No.

13 Q Now, you reported directly to

14 Secretary Ross, correct?

15 A Yes, ma'am.

16 Q And Census was within your purview?

17 A Yes.

18 Q So did you have access to all of the

19 information that Secretary Ross looked at in

20 considering whether or not to add the question?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: I do not have access to all

1 of the Secretary's files, information, and over a
2 time span, I just would not have it. So I would
3 have to answer that question as I do not believe I
4 do -- I do not.

5 BY MS. GOLDSTEIN:

6 Q So Secretary Ross had some meetings with
7 stakeholders that you did not attend, correct?

8 A Correct.

9 Q And he may have reviewed documents
10 germane to this question that you are unaware of,
11 correct?

Pl. Objection: Fed R.
Evid. 403

12 A Over the course of time or in reading
13 public documents or in whatever, I can't speak to
14 what the Secretary did in full.

15 Q Okay. So let's go down this document.
16 If you go to the last paragraph on this page,
17 three lines down, it says that, "I also met with
18 Census Bureau leadership on multiple occasions."

19 Now, you've testified already about a
20 couple of those meetings that Secretary Ross had
21 with Census Bureau leadership. Are there any
22 other meetings that Secretary Ross held with

1 testified to earlier and the meeting on the
2 timeline and the meeting on the forms, do you
3 recall any other meetings that you attended with
4 Secretary Ross and Census Bureau leadership?

5 A I cannot recall, but he had access to
6 anybody he wanted to along this process.

7 Q Do you know if he spoke to the Census
8 Bureau leadership without you present?

9 A I don't know the answer to that.

10 Q So let's turn the page. And if you go to
11 the second full paragraph, the last --

12 A Can I -- he says here that he has been
13 monitoring press coverage. So when you talk about
14 things he was looking at, I'm sure that -- he says
15 right there that was also there. I failed to
16 remember to say that.

17 Q Terrific. And if you remember other
18 things as we go on, just go ahead and tell me.

19 A I read that.

20 Q So the last sentence of that second full
21 paragraph, it says that "Following the 2020" --
22 "the 2000 census, decennial census -- "the long

1 form sample was replaced by the American Community
2 Survey, ACS, which has included a citizenship
3 question since 2005. Therefore, the citizenship
4 question has been well tested."

5 Now, are you aware of whether the
6 Census Bureau performed any research on how the
7 citizenship question will perform specifically in
8 the decennial census environment?

9 A The Census Bureau told us that they felt
10 that it was well tested to be on the form.

11 Q Are you aware of any research that has
12 been done with respect to how the citizenship
13 question will perform on the decennial census
14 environment?

15 A Not that I'm aware of. I am not aware.

16 Q And did you or anyone at Commerce ask the
17 Census Bureau to research that question?

18 A We asked them if they felt that the
19 question had been tested sufficiently enough to be
20 on the -- on the form. We did not dictate
21 research or tell them not to do research. We
22 asked them for their opinion and gave them free

Pl. Objection:
Testimony is
misleading
without
designation of
the question at
282:20-283:8

1 reign to do what they wanted to give us that
2 opinion.

3 Q Within the time constraints that you were
4 working, correct?

5 A Correct.

6 Q Do you know when the citizenship question
7 was last tested in the context of the ACS or long
8 form?

9 A No, I'm not -- I do not.

10 Q Was Census asked that question?

11 MR. GARDNER: Objection. Lack of
12 foundation. Calls for speculation.

13 BY MS. GOLDSTEIN:

14 Q To your knowledge.

15 A To my knowledge, I'm not sure.

16 Q Did you or, to your knowledge, anyone
17 else at Commerce see the results of the testing
18 that had been performed on the citizenship
19 question in the context of the ACS?

20 A No, not to my knowledge.

21 Q So let's go down to the next paragraph,
22 and I'm just going to start in the middle of the

1 sentence, because it's a long one. "DOJ states
2 that the current data collected under the ACS are
3 insufficient in scope, detail and certainty to
4 meet its purpose under the VRA."

5 Do you see that?

6 A And DOJ states current data collected
7 under -- yes.

8 Q What, if anything, did Commerce do to
9 validate that rationale, to your knowledge?

10 A I'm not aware. I'm not aware of
11 anything.

12 Q And, to your knowledge, what, if
13 anything, did the Census Bureau do to validate
14 that rationale?

15 A You have to ask Census that question.

16 Q You're not aware of anything, correct?

17 A Correct.

18 Q To your knowledge, did the --

19 A I know that they have fully researched
20 and they fully understand -- they've been doing
21 this for a long time, but you need to get into
22 details with them on that.

1 Q And who is they?

2 A The Census Bureau.

3 Q And the Census Bureau, to be clear, asked
4 to meet the Department of Justice's technical
5 experts, correct?

6 A I believe the note said that they sent it
7 to Art Gary, and they said they were bringing
8 their technical so they knew who to bring.

9 Q You understand that the Census Bureau
10 asked to meet with the technical experts at DOJ,
11 correct?

12 I don't want you to look at the
13 documents, Secretary Kelley.

14 You understand that, right?

15 A There's a nomenclature issue here. They
16 sent the letter to Art Gary, they said we're going
17 to bring our technical people. Right. So the
18 answer is, they did not -- I don't know if they
19 reached out to the technical guys. I know they
20 reached out to Art Gary from this, but I know they
21 wanted to meet with him.

22 Q So Census asked Art Gary to set up a

1 meeting, yes?

2 A Yes. Absolutely. Yes.

3 Q And ultimately -- and that meeting was
4 going to involve experts, correct?

5 A Yes.

6 Q And that meeting didn't happen, correct?

7 A Correct. Yes.

8 Q Okay.

9 A Well, what I don't know is who the DOJ
10 was going to bring to the meeting. I do know who
11 Census was going to bring to the meeting.

12 Q Who was Census going to bring to the
13 meeting?

14 A Well, they said they were going to bring
15 some technical people --

16 Q Oh, the categories?

17 A Yes.

18 Q To your knowledge, did the Department of
19 Justice ever identify a number of cases that they
20 would have brought, but for the absence of
21 block-level citizenship data?

22 A And I'm not aware of that.

1 You can look at me.

2 A Describe what you mean by that.

3 Q What do you think I mean? What does
4 empirical data mean to you?

5 A Is this data that Census Bureau produced?
6 Absolutely. They produced this on a factual
7 basis. Is that where you're going?

8 Q I just want to make sure -- so if you
9 look at the last line of that paragraph that we
10 were just looking at in the decision memo?

11 A Okay.

12 Q "No empirical data existed on the impact
13 of a citizenship question on responses."

14 You see that?

15 A So --

16 Q Did I read it right?

17 A No. You read it -- that's Nielsen,
18 senior vice-president, from the Nielsen Group who
19 said that.

20 Q Okay. So -- I see your point.

21 A That's the opinion of the --

22 Q Okay. So let's go back to the sentence

1 we were reading a moment ago, that neither the
2 Census Bureau or the concerned stakeholders could
3 document that the response rate would, in fact,
4 decline materially.

5 Is that whether testing a question is
6 for -- or one thing that testing can be for, to
7 determine if response rates will decline
8 materially?

9 A Yes.

10 Q And, for example, an end-to-end test
11 that -- could test whether or not a question
12 causes response rates to decline, correct?

13 A Yes. But an end-to-end test does a whole
14 lot more than that.

15 Q Of course. But that's one thing it could
16 do, right?

17 A It's one thing it could do.

18 Q And another thing that an end-to-end test
19 can do is test whether or not NRFU -- or how
20 effective NRFU is in the context of a citizenship
21 question, correct?

22 A Correct.

1 Q And that was not done with the
2 citizenship question, correct?

3 A Correct. It was done with the ACS over
4 the year's time frame that was shown at the
5 percent numbers and the amount of people.

6 Q And it's my understanding that you have
7 not seen that data with respect to the ACS
8 testing, correct?

9 A You said the testing. I've seen the
10 results on the ACS, how many -- how many ACSs are
11 out there, how many times the question's been
12 asked, which is what this paragraph refers to.

13 Q So then the paragraph goes on to talk
14 about Secretary Ross's discussion with Nielsen.
15 Were you part of that conversation?

16 A I don't remember, but I -- I don't
17 remember if I was on that call or not.

18 Q Is there anything that would help you
19 remember if you were on that call?

20 A I could reconstruct the day, I guess. I
21 mean --

22 Q Okay. Have you -- so you see that

1 Nielsen is referencing that it had added questions
2 on the ACS on sensitive topics to certain short
3 survey forms without any appreciable decrease in
4 response rates.

5 Did you ever see those surveys from
6 Nielsen -- that are referenced from Nielsen in
7 that sentence?

8 A No.

9 Q Do you know if anyone at Commerce did?

10 A I don't know.

11 Q I would have to ask other people at
12 Commerce to find out, correct?

13 A Correct.

14 Q Including Secretary Ross, to find out if
15 Secretary Ross saw those, correct?

16 A Correct.

17 Q So let's go -- let's go to the last
18 paragraph here, and this states that, "The
19 Census Bureau determined that for 2013 to 2016,
20 ACS surveys nonresponses to the citizenship
21 question for non-Hispanic whites ranged from 6.0
22 to 6.3, for non-Hispanic blacks ranged from 12.0

1 to 12.6 percent, and for Hispanics ranged from
2 11.6 to 12.3 percent. However, these rates were
3 comparable to nonresponse rates for other
4 questions on the 2013 and 2016 census."

5 And one of the examples that is
6 giving --

7 MR. GARDNER: You misread. It's 2016
8 ACS.

9 MS. GOLDSTEIN: 2016, I apologize.

10 BY MS. GOLDSTEIN:

11 Q And one of the examples that they give,
12 "The Census Bureau estimates" -- "Census Bureau
13 estimates showed similar nonresponse rate ranges
14 occurred for questions on the ACS asking the
15 number of times the respondent was married, 4.7 to
16 6.9 percent."

17 Now, do you agree that the 4.7 to 6.9
18 percent nonresponse rate for the question, the
19 number of times the respondent was married, is
20 similar to the nonresponse rates to the
21 citizenship question for non-Hispanic blacks and
22 Hispanics that ranged from 11.6 to 12.6 percent?

1 MR. GARDNER: Objection. Lack of
2 foundation. Objection.

3 (Thereupon, the court reporter
4 clarified.)

5 MR. GARDNER: Objection. Form.

6 THE WITNESS: The way this reads --

7 BY MS. GOLDSTEIN:

8 Q I just want to know if you agree that 4.7
9 to 6.9 percent for the marriage rates, if you
10 agree that is similar to the 11.6 to 12.6 rates
11 for the citizenship question for non-Hispanic
12 blacks and Hispanics?

13 MR. GARDNER: Same objections.

14 THE WITNESS: You are taking it out of
15 context of how this was written, but you're asking
16 me where it is comparing three sets of numbers
17 with a group of numbers which I count down below.
18 You're asking me to isolate two or three of those
19 numbers and make a comparison, which is taking
20 this paragraph out of context. So if you're
21 asking me simply to say is that comparable, the
22 answer would be, they are dissimilar.

1 rates for the citizenship question are much
2 greater than comparable rates for other
3 demographic variables like sex, birth date/age and
4 race/ethnicity, data not shown."

5 Do you see that?

6 A I wasn't with you. Whether the response
7 is by mail-in questionnaire or --

8 Q No. The very last line of the last
9 paragraph in B1.

10 A Right. But there's a full sentence that
11 starts with "whether."

12 Q Sure.

13 A "The response is by mail-in questionnaire
14 or ISR instrument and item response -- nonresponse
15 rates for citizenship question are much greater
16 than the comparable rates for other demographic
17 variables like sex, birth/age, race/ethnicity
18 not" -- "data not shown."

19 Q Have you seen any empirical data that
20 contradicts this analysis on Page 1280?

21 A No.

22 Q And, to your knowledge, has anyone in

1 Commerce seen any empirical data or studies that
2 contradict the Census Bureau's analysis on
3 Page 1280?

4 A Not that I'm aware of.

5 Q And that includes Section B2 on
6 self-response rates, correct?

7 A Right. And it's interesting, because
8 this talks about -- well, not being asked that
9 question.

10 Q And that includes Section B2 on
11 self-response rates?

12 A Well, we only looked at that one little
13 part of -- if you want --

14 Q That one little part of that?

15 A -- me to take the --

16 Q That one little part of the sentence.

17 A What's the question? You'd rather me --

18 Q Sure. Let me rephrase it. Let me re-ask
19 it then.

20 Have you seen any -- apart from the
21 Census Bureau memos, have you seen any empirical
22 data or studies that contradict the

1 Census Bureau's analysis of self-response rates
2 with respect to the citizenship question?

3 A Not that I'm aware of.

4 Q And, to your knowledge, has anyone in
5 Commerce seen any empirical data or studies that
6 contradict the self-response rate analysis that
7 the Census Bureau put forth in Section B2 on
8 Page 1280?

9 Just asking what you know.

10 A I don't know.

11 Q And if you go to Page 1281, let me ask
12 this more generally so we don't have to bother
13 with the documents.

14 Have you seen -- other than the materials
15 that the Census Bureau prepared for you, the Abowd
16 memos that we've been talking about a lot today,
17 have you seen any scientific studies or data that
18 contradict those analyses?

19 Have you --

20 A These specific analyses, not that I'm
21 aware of.

22 Q And, to your knowledge, has anyone in

1 Commerce?

2 A I don't know. I can't speak to anybody
3 in Commerce -- everybody in Commerce.

4 Q I'd have to speak to the other people in
5 Commerce who were involved, correct?

6 A Correct.

7 Q To see if they saw other science that you
8 haven't seen?

9 MR. GARDNER: Objection to form.

10 THE WITNESS: Yes.

11 BY MS. GOLDSTEIN:

12 Q Okay. So let's go back to the decision
13 memo, and let's go to -- you see where it says
14 "Option C"?

15 A Yes, ma'am.

16 Q So in the middle of that paragraph,
17 Secretary Ross writes, "That Census Bureau
18 analysis showed that between 28 and 34 percent of
19 citizenship for self-responses for persons that
20 administrative records show are noncitizens are
21 inaccurate."

22 Did I read that correctly?

1 Q Sure.

2 A -- and tie it back.

3 Q So let's step away from the document for
4 a second. It sounds like you just testified -- I
5 just want to make sure I understand -- that the
6 Census wanted an accurate and complete count,
7 correct?

8 A The Census wants?

9 Q Or I'm sorry. Commerce wants an accurate
10 and complete count?

11 A A complete and accurate census, yes.

12 Q And that the Secretary's goal in choosing
13 between these options, he wanted to pick an option
14 that would provide a great amount of accuracy,
15 correct?

16 A I can't speak for the -- now you're
17 asking me to speak for the Secretary.

18 Q To your knowledge, you talked to the
19 Secretary?

20 A Yes.

21 Q You know what the Secretary prioritized,
22 correct?

1 A Correct.

2 Q Accuracy was important to the Secretary?

3 A Complete and accurate were important to
4 the Secretary.

5 Q And the Census Bureau concluded that
6 Option D was not the most accurate option,
7 correct?

8 If you're not sure, you can tell me.
9 We'll go back to the document.

10 You want to read my question one more
11 time? Thanks.

12 (Thereupon, the reporter read the record
13 as requested.)

14 THE WITNESS: But this -- okay.

15 BY MS. GOLDSTEIN:

16 Q Correct?

17 A In the opinion of the Census Bureau, this
18 is opinion, it's not conclusive fact --

19 Q I'm not asking for conclusive fact. The
20 Census Bureau --

21 A Their opinion was --

22 Q -- concluded that the most accurate

1 Q I'd have to ask him?

2 A Please.

3 Q And then it says, the next full sentence,
4 "But no one provided evidence that reinstating a
5 citizenship question on the decennial census would
6 materially decrease response rates among those who
7 generally distrusted government and government
8 information collection efforts, dislike the
9 current administration or fear of law
10 enforcement."

11 Do you see that?

12 A Yes.

13 Q You didn't ask the Census Bureau to test
14 that question, correct?

15 A The Census Bureau indicated that they
16 felt the question had been tested.

17 Q Now, this says that no one provided
18 evidence that reinstating the question -- I'm just
19 going to paraphrase -- that reinstating the
20 question in this climate with these people who
21 generally distrusted government would decrease
22 response rates, correct?

1 A That's what it says, which is
2 paraphrased.

3 Q Yeah.

4 A You read it verbatim before.

5 Q But fair enough, right?

6 No one in Commerce asked the
7 Census Bureau to provide that evidence through
8 additional testing, correct?

9 MR. GARDNER: Objection. Calls for
10 speculation. Lack of foundation.
11 BY MS. GOLDSTEIN:

12 Q To your knowledge?

13 A The Census Bureau -- excuse
14 me -- Commerce asked the Census Bureau whether
15 they felt the question was adequately tested.

16 Q And Secretary Ross felt that there was no
17 evidence, at least with respect to this
18 implication of the citizenship question, correct?

19 A I can't tell you what he felt or anything
20 else.

21 Q That's just what he wrote --

22 A We know what he wrote.

1 Q Okay. And you never asked the
2 Census Bureau to run tests on the impact of
3 reinstating the citizenship question on this
4 population described in that sentence we've just
5 been reading, correct?

6 A We asked them if they felt that this
7 question had been tested appropriately enough to
8 be put on the 2020 decennial.

9 Q I'm just going to try my question one
10 more time.

11 You didn't ask the Census Bureau to
12 provide evidence that reinstating the citizenship
13 question would impact or -- the response rates on
14 the population that is referenced in that sentence
15 we've just been reading, correct?

16 A So if --

17 Q I just want to know whether you asked for
18 testing on that subject.

19 A If you are asking me if I asked the
20 Census to provide testing on response rates of
21 people who -- among those who generally distrust
22 government and government information collected

1 efforts, dislike the current political climate, or
2 fear law enforcement, I did not do that.

3 Q And, to your knowledge, did anyone at
4 Commerce ask the Census Bureau to provide evidence
5 of that?

6 A I do not know.

7 Q Okay. So let's go to the last sentence
8 of that paragraph. "While it is possible that
9 this belief is true, there is no information
10 available to determine the number of people who
11 would, in fact, not respond due to a citizenship
12 question being added and no one has identified any
13 mechanism for making such a determination."

14 Do you see that?

15 A I do.

16 Q Did you ask the Census Bureau if they
17 could design a test to make this determination?

18 A No. I did not ask them to make -- to
19 create a test.

20 Q And, to your knowledge --

21 A I --

22 Q I just have to ask it for the record.

1 -- did anyone at Commerce ask the
2 Census Bureau to design a test to make this
3 determination?

4 A Not that I know of.

5 But I repeat, we asked the Census Bureau
6 if they felt that this question had been
7 thoroughly tested on a number of occasions.

8 Q Okay. Let's go to the next page.

9 And I want to go to the middle of that
10 first paragraph. The same former director
11 noted -- do you see where I'm starting? "In the
12 years preceding" --

13 A Yes.

14 Q -- "certain interest groups consistently
15 attacked the census and discouraged
16 participation."

17 Do you know what Secretary Ross is
18 referring to here?

19 Just with respect to those interest
20 groups, do you know what he's referring to?

21 MR. GARDNER: Objection. Calls for
22 speculation.

1) "While the reinstatement of a citizenship question
2) may be a data point on which these interest groups
3) seize in 2019, past experience demonstrates that
4) it is likely efforts to undermine the decennial
5) census will occur -- will occur again, regardless
6) of whether the decennial census includes a
7) citizenship question."

8) Now, I only want to know, have you seen
9) any empirical data that relates to that point?

10) A No.

11) Q And do you know if Secretary Ross has
12) seen any empirical data --

13) MR. GARDNER: Objection.

14) BY MS. GOLDSTEIN:

15) Q -- relating to that point?

16) MR. GARDNER: Calls for speculation.

17) THE WITNESS: I'm not going to speak for
18) Secretary Ross.

19) BY MS. GOLDSTEIN:

20) Q I need to speak to him --

21) MR. GARDNER: Objection

22) BY MS. GOLDSTEIN:

1 What time frame are we talking about?

2 I'm not sure which communications you're referring
3 to.

4 A I have no idea what you're -- you're
5 asking me the questions, and you're asking me what
6 time frame we're talking about. This has gotten
7 off the rails a little.

8 Q It's late in the day.

9 A And I really want to be as helpful as
10 possible, so, please.

11 Q Understood. Understood.

12 So let's say March 2018, so after the
13 March 1st memo, before the March 26th decision,
14 and from understanding of the documents, that's
15 the time period when he was doing a lot of the
16 discussions with stakeholders. So during that
17 time period, did he have communications with DOJ
18 about the citizenship question?

19 A I don't know the answer to that.

20 Q You don't know?

21 A I do not know the answer to that.

22 Q Okay. Do you know whether he had any

1 stakeholder conversations with any Voting Rights
2 Act -- I should say organizations interested in
3 Voting Rights Act enforcement, such as, for
4 example, the ACLU, MALDEF, any other such groups
5 that occasionally bring Section 2 enforcement
6 actions?

7 MR. GARDNER: Objection. Form.

8 THE WITNESS: I would have to refer to
9 the list of everybody and want you to ask the
10 question.

11 BY MS. BOUTIN:

12 Q Okay. But do you recall any, offhand, as
13 you sit here?

14 A No, I don't.

15 Q Did you ever suggest to Secretary Ross or
16 Earl Comstock that they hold stakeholder
17 conversations about the citizenship
18 questions -- question -- excuse me -- with DOJ or
19 any groups interested in Voting Rights Act
20 enforcement?

21 MR. GARDNER: Objection. Form.

22 THE WITNESS: We certainly talked and

1 took great, earnest interest in making sure we had
2 a broad -- a broad and comprehensive group for the
3 Secretary to talk to.

4 BY MS. BOUTIN:

5 Q But you don't remember any suggestion, as
6 far as stakeholders go, whose specific interests
7 were Voting Rights Act enforcement?

8 A I can't speak to -- I don't know that
9 somebody wasn't spoken to that are --

10 Q But you don't know of anyone?

11 A Not to my knowledge.

12 Q Earlier, you stated that there are other
13 instances in which an agency has refused to meet,
14 and you referred to as an example -- you referred
15 to OMB as an example. What was that in reference
16 to.

17 A The race and ethnicity question, which is
18 a question that its form is dictated by a group
19 called oh OIRA, which is part of OMB. And because
20 the question needed to be -- the questions needed
21 to be done by a certain point when we're talking
22 about theses timelines, OIRA would have had to

1 change how it -- it mandated race and ethnicity to
2 be viewed and how it would be broken out. And so
3 we were getting towards -- closer to them, and we
4 would call and say, do you have an update, do you
5 want us to come meet? And they'd say no, we don't
6 have an update. At that point, we're not --

7 Q Had there been previous meetings prior to
8 their refusal to meet?

9 A They did not meet. I don't want to go
10 all the way to they refused -- they refused to
11 meet, but they did not meet. Do I know if there
12 were any meetings before that?

13 Q About the race and ethnicity question?

14 A Not prior to my arrival, but prior to
15 that, I don't -- not after my arrival. Prior to
16 that, I don't know. I do know that over the
17 years, there was communication and correspondence,
18 that they worked closely together.

19 Q Okay.

20 A So I believe they did meet prior.

21 Q Okay. So did they -- and I'm sorry. You
22 say OIRA is the name of --

1 Okay. Did -- what -- was the final
2 result in that process such that OIRA got what
3 they wanted? Did the race and -- let me rephrase.

4 Did the race and ethnicity question end
5 up in the form that they had advocated?

6 A OIRA, yes.

7 Q Okay. This question was asked earlier,
8 but I don't think -- I think things got
9 sidetracked.

10 Were you surprised by Secretary Ross's
11 decision to add the citizenship question against
12 the recommendation of the Census Bureau?

13 A It wasn't my place to be surprised or
14 not. It was my place to do --

15 Q But were you surprised?

16 A -- what the Secretary asked.

17 Q But were you surprised?

18 A I was not surprised or not surprised. I
19 said, okay, that's the decision, now we need to
20 say, how do we implement it? How do we go
21 forward?

22 Q So I think without looking at them, I

1 Measurement?

2 A Not intimately.

3 Q Okay. I will represent to you that it is
4 an office within Census, and I'd like to show
5 you --

6 A Please show me.

7 Q -- a September 20, 2017 memorandum for
8 Associate Director Research and Methodology, and I
9 think it will be Exhibit 29.

10 (Plaintiffs' Exhibit 29, September 20,
11 2017 memorandum, was marked.)

12 THE WITNESS: I was afraid you were going
13 to give me that without a number and I couldn't
14 take it.

15 May I clarify, Rory, my last statement?

16 BY MR. ADAMS:

17 Q Yes.

18 A When you said the Center for Survey
19 Measurement, I thought you were talking about an
20 outside concern. As a group inside of the
21 research and methodology, they have all kinds of
22 teams.

1 BY MR. ADAMS:

2 Q Okay.

3 A So I -- I recognize they do all these
4 things, but I -- I did not understand the context
5 in which you were talking.

6 Q Okay.

7 A So I would not say to you I've never seen
8 any work by CSM before, but there's lots of
9 acronyms, as you can well imagine.

10 Q I can.

11 Are you familiar with this document?

12 A No. I am not familiar with this
13 document.

14 Q I'd like to read a number of statements
15 in the document and ask if you are familiar
16 with -- in general, with the concerns that are
17 expressed in the document. So beginning at the
18 bottom of the first page, "FRs, field" --
19 sorry -- "field representatives, and FS is field
20 supervisors, emphasized facing a, 'new phenomenon'
21 in the field, and reported that respondent's
22 fears, particularly among immigrant respondents,

1 have increased markedly this year. Respondents
2 reported being told by community leaders not to
3 open the door without a warrant signed by a judge,
4 and CSM researchers observed respondents
5 falsifying names, dates of birth and other
6 information on household rosters."

7 Were you aware that these observations
8 had been made in the field in the context of CSM's
9 various research projects?

10 A I understood the concerns were made, but
11 not under this particular research paper or other
12 things, and I think we've seen today where -- but
13 this is from the field itself. I have not seen
14 this document, but we have talked about concerns.

15 Q Turning to the third page, which is Bates
16 number 2448, the very top, "It should be noted
17 that this level of deliberate falsification of the
18 household roster and spontaneous mention of
19 concerns regarding negative attitudes towards
20 immigrants is largely unprecedented in the
21 usability interviews that CSM has been conducting
22 since 2014 in preparation for the 2020 census."

* * * * *

CERTIFICATE OF REPORTER

I, KAREN LYNN JORGENSEN, RPR, CSR, CCR the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that the said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



KAREN LYNN JORGENSEN, RPR, CCR, CSR

Dated this 31st day
of August , 2018.